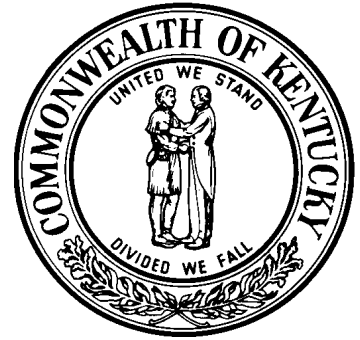


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 2
FRIDAY, AUGUST 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2014.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 7, 2014, at 1:00 p.m. in room 154 Capitol Annex. See **tentative agenda** on pages 231-233 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

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VOLUME 41, NUMBER 2 – AUGUST 1, 2014

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, AUGUST 7, 2014, at 1:00 p.m., Room 154 Capitol Annex**

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation**

Income Tax; General Administration

103 KAR 15:180 & E. Kentucky new markets development program tax credit. ("E" expires 12/2/2014)

**GENERAL GOVERNMENT CABINET
Board of Registration for Professional Geologists**

Board

201 KAR 31:100. Administrative subpoena.

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)

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

Board of Licensed Diabetes Educators

Board

201 KAR 45:110. Supervision and work experience.

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

201 KAR 45:170. Application procedures.

201 KAR 45:180. Diabetes education courses.

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

Game

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

**JUSTICE AND PUBLIC SAFETY CABINET
Office of the Secretary**

Telecommunicators

500 KAR 4:011. Repeal of 500 KAR Chapter 4.

Department of Criminal Justice Training

General Traffic

503 KAR 3:005. Definitions.

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

503 KAR 3:040. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures.

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on Proprietary Education**

Commission

791 KAR 1:010. Applications, permits and renewals.

791 KAR 1:020. Standards for licensure.

791 KAR 1:025. Fees.

791 KAR 1:030. Procedures for hearings.

791 KAR 1:035. Student protection fund.

791 KAR 1:050. Application for license for commercial driver license training school.

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.

791 KAR 1:091. Repeal of 791 KAR 1:090.

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

Malt Beverage Equipment, Supplies and Service

804 KAR 11:040. Growlers. (Comments Received)

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission**

Utilities

807 KAR 5:001. Rules of procedure.

807 KAR 5:011. Tariffs.

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

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

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

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

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State Board on Electric Generation and Transmission Siting

Utilities

807 KAR 5:110. Board proceedings.

Public Service Commission

Utilities

807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing**

Plumbing

815 KAR 20:040. Vehicle identification.
815 KAR 20:050. Installation permits.
815 KAR 20:060. Quality and weight of materials.
815 KAR 20:070. Plumbing fixtures.
815 KAR 20:090. Soil, waste, and vent systems.
815 KAR 20:130. House sewers and storm water piping; methods of installation.
815 KAR 20:191. Minimum fixture requirements.

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

Certificate of Need

900 KAR 6:030. Certificate of Need expenditure minimums.
900 KAR 6:125. Certificate of Need annual surveys.

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

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule.

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

Kentucky Early Intervention System

902 KAR 30:001. Definitions for 902 KAR Chapter 30. (Deferred from July)

Department for Public Health

Controlled Substances

902 KAR 55:045. Exempt prescription products. (Amended After Comments)
902 KAR 55:090. Exempt anabolic steroid products. (Deferred from June)

**Department for Public Health
Division of Public Health Protection and Safety**

Radon

902 KAR 95:040. Radon Contractor Certification Program.

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

Medicaid Services

907 KAR 1:835. Michelle P. waiver services and reimbursement. (Comments Received, SOC ext)
Commissioner's Office

Payment and Services

907 KAR 3:111. Repeal of 907 KAR 3:110.

Division of Policy and Operations

Hospital Service Coverage and Reimbursement

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

**Department for Aging and Independent Living
Division of Quality Living**

Aging Services

910 KAR 1:180. Homecare program for the elderly.

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

Supplemental Nutrition Assistance Program

921 KAR 3:035. Certification process.

REMOVED FROM AUGUST 2014 AGENDA

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission**

Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 11. (Deferred from July)
201 KAR 11:105. Advertising listed property; advertising public information about specific property; when consent and authorization of owner or principal broker is required. (Deferred from July)
201 KAR 11:121. Improper conduct. (Deferred from July)

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice**

Child Welfare

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services. (Comments Received, SOC ext)

**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)

**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
Office of Health Policy**

Certificate of Need

900 KAR 6:055. Certificate of Need forms. (Comments Received, SOC ext)

900 KAR 6:070. Certificate of Need considerations for formal review. (Comments Received, SOC ext)

900 KAR 6:075. Certificate of Need nonsubstantive review. (Comments Received, SOC ext)

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. (Comments Received, SOC ext)

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

Kentucky Early Intervention System

902 KAR 30:110. Point of Entry and service coordination. (Comments Received, SOC ext)

902 KAR 30:120. Evaluation and eligibility. (Comments Received, SOC ext)

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

902 KAR 30:150. Personnel qualifications. (Comments Received, SOC ext)

902 KAR 30:160. Covered services. (Comments Received, SOC ext)

902 KAR 30:180. Procedural safeguards. (Comments Received, SOC ext)

902 KAR 30:200. Coverage and payment for services. (Comments Received, SOC ext)

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

Medicaid Services

907 KAR 1:835. Michelle P. waiver services and reimbursement. (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
405 KAR 10:025E

The Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission were established on March 22, 2013 with the signing of HB 66. Permits previously subject to the Kentucky Voluntary Bond Pool continued to receive subsidization of reclamation bonds upon entering the KRGF. If a large number of permits held by these entities were forfeited then the KRGF would suffer substantial losses. KRS 350.518(5) authorizes the cabinet to promulgate an administrative regulation to establish eligibility standards for applicants who wish to receive subsidization upon assuming liability for permits currently subsidized by the KRGF. The emergency regulation is necessary in order to prevent devastating losses to the KRGF by allowing entities that were not former bond pool members to assume responsibility for subsidized permits at the current subsidized level, preventing forfeitures the KRGF may not be able to withstand. The emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of the Reclamation Guaranty Fund
(New Emergency Administrative Regulation)

405 KAR 10:025E. Extension of performance bond subsidization.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.518(5)

EFFECTIVE: June 30, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation establishes information related to the operation of the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation shall apply only to entities seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

Section 2. Performance Bond Subsidization. (1) Performance bond subsidization may be extended to an applicant who was not a member of the former voluntary bond pool fund prior to its dissolution if the:

- (a) Applicant intends to obtain its permit by transfer from a member of the former Kentucky Voluntary Bond Pool;
- (b) Permit to which the applicant intends to succeed meets one (1) or more of the criteria for the cabinet to seek bond forfeiture under 405 KAR 10:050, Section 3;
- (c) Applicant meets the requirements of this administrative regulation; and
- (d) Commission determines it is in the best interest of the KRGF pursuant to KRS 350.509(1).

(2) If the commission determines the criteria for performance bond subsidization extension have been met, the bonds previously issued by the KRGF to the member of the former voluntary bond pool fund shall be substituted for bonds newly issued by the KRGF in accordance with the provisions of 405 KAR 10:015, Section 5.

(3) Subsequent to the extension of performance bond subsidization for the issuance of a successor permit pursuant to

subsection (2) of this section, the KRGF may extend additional subsidization to the permittee for the permit to enable the permittee to complete mining and reclamation operations, if the commission determines it is in the best interest of the KRGF. The commission shall review an applicant's ability to meet the approval requirements of this administrative regulation when an application for additional subsidization has been submitted.

(4) Only permits with bonds previously covered by the former voluntary bond pool fund shall be eligible for performance bond subsidization. Other permits held by the applicant shall not be subsidized by the KRGF.

Section 3. Applicant Criteria. (1) Applicants for extension of performance bond subsidization shall submit an application on the Application for Performance Bond Subsidization for Permit Succession, RGF-4 form, which shall include:

- (a) Identification of the permittee which the applicant wishes to succeed;
- (b) Identification of permits the applicant intends to obtain by transfer;
- (c) Information regarding the financial standing and compliance record of the applicant; and
- (d) Any other information the commission needs to make a determination.

(2)(a) The commission shall consider applications on a case-by-case basis and meeting the criteria under this section shall not be grounds for automatic performance bond subsidization. An applicant shall be allowed thirty (30) calendar days after receipt of the commission's determination to contest the determination in writing.

(b) The written notice shall include:

- 1. An explanation of the nature of the contest; and
- 2. The documentation relied upon by the applicant.

(3) The applicant for extended performance bond subsidization shall be in good financial standing. The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the KRGF and the cabinet. The commission shall consider the following financial ratios and related financial information:

- (a) The ratio of current assets to current liabilities;
- (b) The ratio of net income to net sales;
- (c) The ratio of total liabilities to stockholders' equity;
- (d) The ratio of net income to owners' equity;
- (e) The ratio of owners' equity to total assets; and
- (f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

(4) The applicant for extended performance bond subsidization shall have held, under the same name or other name as provided in subsection (5) of this section, a permit issued by the cabinet to conduct surface mining operations in Kentucky or by an authorized agency governing surface mining operations in another state or territory, for a period of at least five (5) of the seven (7) years immediately preceding the application for extended performance bond subsidization, and have exhibited an approved compliance record as detailed by Section 4 of this administrative regulation.

(5) If the applicant cannot satisfy the requirements of subsection (4) of this section, then the following types of permits held by persons other than the applicant may be used to satisfy those requirements:

- (a) Permits issued to a person who owns fifty (50) percent or more of the applicant;
- (b) Permits issued to a person who is owned fifty (50) percent or more by a person meeting the requirements of subsection (4) of this section; or
- (c) Permits issued to persons whose combined ownership of the applicant is fifty (50) percent or more, provided each person meets the requirements set forth in subsection (4) of this section.

Section 4. Determination of Compliance Record. (1) An applicant shall be deemed to have an approved compliance record if the applicant, each person who owns or controls the applicant,

each person who is owned or controlled by the applicant, and each person who is under common ownership and control with the applicant meet all the following criteria:

(a) Has never committed a violation for mining without having first obtained the required permit;

(b) Has never forfeited a bond or had a permit revoked;

(c) Has never avoided forfeiture of a bond because a surety performed reclamation work in order to avoid forfeiture;

(d) Has never been determined to have demonstrated a pattern of violations;

(e) Has not been issued more than one (1) order for cessation and immediate compliance for failure to complete required remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation;

(f) Has not been issued more than one (1) order for cessation and immediate compliance for creating an imminent danger to the health and safety of the public or causing significant, imminent environmental harm in the most recent thirty-six (36) months of operation and the order was abated as ordered in a timely manner;

(g) Has not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation in the most recent thirty-six (36) months of operation and the violation was abated in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated with no civil penalty;

(h) Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 or other applicable state or federal statute or regulation on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated with no civil penalty; and

(i) Has not had civil penalties remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(2) To the extent the information is available, the commission may take into account the performance of the applicant and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this section.

Section 5. Compliance Review for Continued Subsidization. The commission shall review the compliance record of former applicants for extended bond subsidization. If the commission determines that the permittee no longer satisfies any of the criteria in Section 4(1) of this administrative regulation, it may advise the cabinet that the permittee is no longer eligible for performance bond subsidization. Upon receipt of this notice, the cabinet shall immediately order the permittee to cease surface coal mining operations on that permit until it has obtained alternate bond coverage. During the period of cessation, the permittee shall maintain the permit in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 6. Permit Specific Bond. (1) For each permit obtained by transfer from a member of the former voluntary bond pool fund, a permit-specific bond at a rate determined by the commission but no less than \$2,000 per acre shall be posted.

(2) Permit specific bonds posted pursuant to this section shall be released in accordance with the provisions of 405 KAR 10:015, Section 2.

Section 7. Incorporation by Reference. (1) "Application for Performance Bond Subsidization for Permit Succession", April 2014, is incorporated by reference.

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

subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 30, 2014

FILED WITH LRC: June 30, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria necessary for entities to qualify to receive performance bond subsidies when a permit that was in the former voluntary bond pool is transferred to them. The administrative regulation applies only to entities seeking to obtain by transfer the permit of a current member of the Kentucky Reclamation Guaranty Fund (KRGF) who was a member of the former Kentucky Voluntary Bond Pool.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the qualifying criteria for extended performance bond subsidization of permits when transferred from members of the former voluntary bond pool to KRGF members that were not former voluntary bond pool members.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.518(5) authorizes the Kentucky Reclamation Guaranty Fund Commission (KRGFC) to establish eligibility standards for entities interested in seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the criteria authorized by KRS 350.518(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could impact the 261 KRGF members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require the entities that desire to transfer current permits from former voluntary bond pool members to meet certain criteria in order to receive performance bond subsidization of the transferred permit under the KRGF.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each permittee will vary depending on the amount of reclamation bond required in order to transfer the permit. There will be no cost to members of the KRGF not involved in the permit transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By meeting the criteria of this administrative regulation the entity will receive performance bond

subsidization of the permit that was transferred from the former voluntary bond pool. Members of the KRGF not involved in the permit transfer will benefit from the avoidance of bond forfeitures and the resulting withdrawals of KRGF assets to complete reclamation of the permits.

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

(a) Initially: This new administrative regulation will not significantly increase the cost to the Office of the Reclamation Guaranty Fund (ORGF).

(b) On a continuing basis: Future costs would remain essentially unchanged for this function in the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to this proposed 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 increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that desire continued performance bond subsidization of former voluntary bond pool permits upon transfer will be required to meet the same criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, Office of the Reclamation Guaranty Fund, and the KRGFC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.518(5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any new revenue for the state or local government. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate revenue in subsequent years. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at \$600,000.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

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

STATEMENT OF EMERGENCY 804 KAR 4:230E

This emergency administrative regulation amends an existing regulation to comply with statutory changes that permit new licensees to hold an extended hours license. This emergency administrative regulation is necessary to implement the license privileges in a timely manner once the new alcoholic beverage license types become law, in accordance with the emergency clause enactment included in KRS 13A.190(1)(a)(3). This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
FREDERICK HIGDON, Chairman
LARRY R. BOND, Acting Secretary

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Emergency Amendment)

804 KAR 4:230E. Extended hours supplemental licenses.

RELATES TO: KRS 243.030(31), 243.050

STATUTORY AUTHORITY: KRS 241.060

EFFECTIVE: July 15, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.050[(5)] establishes the extended hours supplemental license [a new class of supplemental liquor licenses] and authorizes the board by administrative regulation to set the necessary conditions and restrictions upon this class of license. This administrative regulation establishes the conditions and restrictions for extended hours supplemental licenses.

Section 1. Definition. "Prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplemental License.

Section 2. This administrative regulation establishes an Extended Hours Supplemental License for the retail sale of alcoholic beverages, distilled spirits, wine, and malt beverages by the drink. [This license is divided into four (4) categories:]

(1) A convention center holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing. [The Convention Center Extended Hours Supplemental License:]

(2) A horse racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing. [The Horse Race Track Extended Hours Supplemental License:]

(3) An automobile racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing. [The Commercial Airport Extended Hours Supplemental License; and]

(4) A railroad system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(5) A state park holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(6) A commercial airlines system or charter flight system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(7) A licensee holding a retail drink license pursuant to KRS Chapter 243 located within a commercial airport shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(8) A qualified historical site licensee holding an extended hours supplemental license shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing. [The Automobile Race Track Extended Hours Supplemental License.]

Section 3. The supplemental licenses may be issued by the distilled spirits administrator and malt beverage administrator who, pursuant to KRS 243.050[(6)], shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, or the economic development of Kentucky or any part thereof. ~~[Section 4. (1) The Convention Center Extended Hours Supplemental License may be issued to any facility which holds a convention center or convention hotel complex license pursuant to KRS 243.050(4). The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.~~

~~(2) The Horse Race Track Extended Hours Supplemental License may be issued to any horse race track licensed to conduct a race meeting under KRS Chapter 230 and which is the holder of a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.~~

~~(3) The Commercial Airport Extended Hours Supplemental License may be issued to any commercial airport through which 500,000 or more passengers arrive or depart annually and which holds a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be Monday through Saturday, prevailing opening time until 4 a.m., and Sundays, 1 p.m. until 4 a.m.~~

~~(4) The Automobile Race Track Extended Hours Supplemental License may be issued to any facility which holds an automobile race track license pursuant to the provisions of KRS 243.050(5) and has a seating capacity of at least 30,000 people. The hours of operation under this license shall be prevailing time for Monday through Saturday and Sunday 1 p.m. until prevailing time for weekday closing.~~

Section 5. An Extended Hours Supplemental License shall not be issued to any applicant that does not hold one (1) or more licenses authorizing the retail sale of distilled spirits and wine by the drink.

Section 6. Only one (1) Extended Hours Supplemental License shall be required for each licensed premises.

~~Section 7. The annual fee for the Extended Hours Supplemental License appears in KRS 243.030 (30) and shall be in addition to all other licenses and license fees due by the holder in connection with the retailing of alcoholic beverages.~~

~~Section 8. The holder of an Extended Hours Supplemental License may be required, from time to time, to furnish the administrators information as requested indicating continued qualification to hold the Extended Hours Supplemental License.~~

~~Section 9. Each applicant for an extended hours supplemental license shall complete and submit to the Office of Alcoholic Beverage Control the "ABC-Basic" application incorporated by reference in 804 KAR 4:400 and the "Schedule X" Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License" form as set forth in 804 KAR 4:410.]~~

FREDERICK A. HIGDON, Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hours of operations and licensing procedures for extended hours supplemental licenses.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the conditions for extended hours supplemental license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.050 authorizes the department to establish the restrictions on extended hours supplemental license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation establishes the hours of operations and licensing procedures for extended hours supplemental license, as established by KRS 243.050.

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

(a) How the amendment will change this existing administrative regulation: This amendment to this administrative regulation cleans up the licensees that may hold an extended hours supplemental license, and incorporates statutory changes to include licensees located inside commercial airports.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to establish the hours of operations and licensing procedures for extended hours supplemental licenses.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.050 authorizes the department to establish hours of operations and restrictions on extended hours supplemental licenses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation cleans up the regulation by deleting licenses and forms that no longer exist, incorporates statutory changes for licensees authorized to hold an extended hours supplemental license, and establishing hours of operation for the holder of an extended hours supplemental license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect extended hours supplemental licensees.

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

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: The previously mentioned businesses will not have to take any actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue to the aforementioned entities.

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

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

implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Kentucky Department of Alcoholic Beverage Control and any state park holding an NQ1 and extended hours supplemental license will be impacted by this administrative regulation

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 243.050 authorizes the department to promulgate administrative regulations relating to an extended hours supplemental license.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

STATEMENT OF EMERGENCY 804 KAR 4:400E

This emergency administrative regulation amends an existing regulation to incorporate new statutory changes into the basic license application for all alcoholic beverage licenses issued by the Department of Alcoholic Beverage Control. This emergency administrative regulation is necessary to implement the new licensing applications in a timely manner once the new alcoholic beverage license types become law, in accordance with the emergency clause enactment included in KRS 13A.190(1)(a)(3). This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
FREDERICK HIGDON, Chairman
LARRY R. BOND, Acting Secretary

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Emergency Amendment)

804 KAR 4:400E. ABC basic application and renewal form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

EFFECTIVE: July 15, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;

(2) A temporary license; or

(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

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

(a) "Basic Application for Alcoholic Beverage License", July 2014 [November 2013]; and

(b) "Application for License Renewal", February 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Chairman
LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates the basic application for an alcoholic beverage license

by reference.

(b) The necessity of this administrative regulation: KRS 241.060(1) authorized the board to promulgate administrative regulations governing procedures relative to the applications for and revocation of licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation incorporates the basic application for an alcoholic beverage license, as required by KRS 241.060(1).

(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 ensures the Basic Application complies with legislative changes that occurred during the 2014 General Assembly. This amendment further adds an applicant affidavit to the basic application, and makes various changes to streamline the application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with legislation enacted during by the 2014 General Assembly. This amendment also informs applicants that the information they provide must be truthful and correct, under threat of perjury.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the basic application for alcoholic beverage licenses is compliant with new statutes when they become effective, as well as making the application easier for applicants to complete by streamlining the application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all applicants for an alcoholic beverage license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licenses that were affected by legislation enacted during the 2014 General Assembly will have to answer additional questions, in compliance with new statute changes. All applicants will be required to complete the applicant affidavit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is used for the implement the administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation amendment does not increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that requires of authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 804 KAR 4:410E

This emergency administrative regulation amends an existing regulation to incorporate new statutory changes into the basic license application for all alcoholic beverage licenses issues by the Department of Alcoholic Beverage Control. This emergency administrative regulation is necessary to implement the new licensing applications in a timely manner once the new alcoholic beverage license types become law, in accordance with the emergency clause enactment included in KRS 13A.190(1)(a)(3). This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
FREDERICK HIGDON, Chairman
LARRY R. BOND, Acting Secretary

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Emergency Amendment)

804 KAR 4:410E. Special applications and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390

EFFECTIVE: July 15, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

Section 1. Special application forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable special application form for the specific license type for which the application is made. The special application forms are listed below:

- (1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application;
- (2) Special Temporary License Application;~~[or]~~
- (3) Supplemental License Application; or
- (4) Distiller's License: Change of License Application.

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

- (1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue;
- (2) ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or
- (3) ABC Form 715 to be submitted to the Department of Alcoholic Beverage Control.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", ~~July 2014~~~~[December, 2013]~~;
- (b) "Special Temporary License Application", ~~July 2014~~~~[December, 2013]~~;
- (c) "Supplemental License Application", ~~July 2014~~~~[December, 2013]~~;
- (d) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;
- (e) "ABC Form 714", ~~July 2014~~~~[June 2013]~~; ~~[and]~~
- (f) "ABC Form 715", ~~July 2014~~~~[June 2013]~~; ~~and~~
- (g) "Distiller's License: Change of License Application", July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the forms to be used to apply for various license types.

(b) The necessity of this administrative regulation: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to

promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation incorporates forms required by KRS 243.380(2) and 243.390.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes various changes to the material incorporated by reference in the regulation. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to streamline the application process for the timely processing of applications. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation incorporates forms required by KRS 243.380(2) and 243.390.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all new applicants for the alcoholic beverage licenses listed in Sections (1) and (2) of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will be required to complete the new incorporated forms when applying for an alcoholic beverage license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implement the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Department of Alcoholic Beverage Control is the only state or local entity affected

by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 902 KAR 20:430E

As part of the Cabinet for Health and Family Service's efforts to enhance access to mental health and substance abuse services, the Office of Inspector General is promulgating this emergency administrative regulation to establish minimum requirements for the operation of "Behavioral Health Services Organizations". This new level of care will allow clinical behavioral health services entities to become licensed in a category eligible for enrollment in the Kentucky Medicaid Program. The anticipated increase in the number of entities licensed to provide behavioral health services in community-based programs to Medicaid recipients and other individuals with substance use disorder, mental health disorder, or a co-occurring disorder will both enhance patient access to needed services and help prevent unnecessary admissions to facility-based care. This action must be implemented on an emergency basis in accordance with KRS 13A.190(1)(a) to enhance patient access to behavioral health services statewide. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (New Emergency Administrative Regulation)

902 KAR 20:430E. Facilities specifications, operation and services; behavioral health services organizations.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 210.005(2), (3), 309.080, 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.042

EFFECTIVE: July 15, 2014

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, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations which provide behavioral health services necessary to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 6 of this administrative regulation.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(6) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(7) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(8) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(9) "Peer support specialist" means a paraprofessional who

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of a:

1. Physician;
2. Psychiatrist;
3. Licensed psychologist;
4. Licensed psychological practitioner;
5. Licensed psychological associate;
6. Licensed clinical social worker;
7. Licensed marriage and family therapist;
8. Licensed professional clinical counselor;
9. Certified social worker;
10. Licensed marriage and family therapist associate;
11. Licensed professional counselor associate;
12. Licensed professional art therapist; or
13. Licensed professional art therapist associate.

(10) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(11) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

- (a) Intoxication;
- (b) Withdrawal; or
- (c) A substance induced mental health disorder.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 6 of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 6 of this administrative regulation, to meet client needs; and

(b) Become accredited within one (1) year of initial licensure by the:

1. Joint Commission;
2. Commission on Accreditation of Rehabilitation Facilities; or
3. Council on Accreditation.

(2) The cabinet shall revoke a license if a behavioral health services organization fails to become accredited in accordance with subsection (1)(b) of this section or fails to maintain accreditation.

(3) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

- (a) The behavioral health services organization;
- (b) The establishment of administrative policy; and
- (c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Public health; or
16. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

- (a) A program director who shall be a:
 1. Psychiatrist;
 2. Physician;
 3. Certified or licensed psychologist;
 4. Licensed psychological practitioner;
 5. Advanced practice registered nurse;
 6. Licensed professional clinical counselor;
 7. Licensed marriage and family therapist;
 8. Licensed professional art therapist;

9. Licensed board certified behavior analyst; or
10. Licensed clinical social worker; and
- (b) A sufficient number of personnel to provide behavioral health services, which may include:
 1. Behavioral health professionals;
 2. Behavioral health professionals under clinical supervision;
 3. Licensed behavior analysts;
 4. Licensed behavior assistant analysts;
 5. Case managers as described in subsections (6), (7), and (8) of this section;
 6. Peer support specialists;
 7. Certified alcohol and drug counselors; or
 8. Community support associates.
- (6) A case manager who provides targeted case management services to clients with a substance use disorder shall:
 - (a) Have a bachelor's degree in a human services field, including:
 1. Psychology;
 2. Sociology;
 3. Social work;
 4. Family studies;
 5. Human services;
 6. Counseling;
 7. Nursing; or
 8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;
 - (b) 1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or
 2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;
 - (c) 1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and
 - (d) Be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID; and
 2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.
- (7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:
 - (a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;
 - (b) 1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or
 2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;
 - (c) 1. Have successfully completed case management training approved by the DBHDID within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and
 - (d) For a bachelor's level case manager, be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID; and
 2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual basis and face-

to-face.

- (8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:
 - (a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;
 - (b) 1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or
 2. Have a master's degree in a human services field as described in subsection (6)(a);
 - (c) 1. Have successfully completed case management training approved by DBHDID within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and
 - (d) Be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID; and
 2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.
- (9) Background checks.
 - (a) The executive director and all personnel of a behavioral health services organization shall:
 1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and
 2. Not have a criminal conviction, or plea of guilty, to a:
 - a. Sex crime as specified in KRS 17.500;
 - b. Violent crime as specified in KRS 439.3401;
 - c. Criminal offense against a minor as specified in KRS 17.500;
 - or
 - d. Class A felony.
- (b) A behavioral health services organization shall perform annual criminal record checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.
- (10) Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all personnel and include:
 - (a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;
 - (b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;
 - (c) A client grievance procedure as described in subsection (14) of this section;
 - (d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and
 - (e) Personnel policy, including:
 1. A job description and qualifications for each personnel category;
 2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and
 3. An annual training program for staff which may include:
 - a. Detection and reporting of abuse, neglect, or exploitation;
 - b. Behavioral management, including de-escalation training;
 - c. Physical management procedures and techniques; and
 - d. Emergency and safety procedures.
- (11) Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:
 - (a) Name and address;
 - (b) Verification of all training and experience, including licensure, certification, registration, or renewals;
 - (c) Verification of submission to the background check required by subsection (9) of this administrative regulation;
 - (d) Performance appraisals; and
 - (e) Employee incident reports.
- (12) After hours services.
 - (a) The behavioral health services organization shall provide,

directly or through written agreement with another behavioral health services provider, access to face-to-face emergency services twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

(13) Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate.

(14) Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

(a) Identification of a behavioral health services organization ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

1. His or her right to file a grievance;

2. The process for filing a grievance; and

3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

Section 5. Residential Services for Substance Use Disorders.

(1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services.

Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) Screening;

(b) Assessment;

(c) Crisis intervention;

(d) Mobile crisis services;

(e) Day treatment;

(f) Peer support;

(g) Intensive outpatient program services;

(h) Individual outpatient therapy;

(i) Group outpatient therapy;

(j) Family outpatient therapy;

(k) Collateral outpatient therapy;

(l) Screening, brief intervention and referral to treatment; or

(m) Targeted case management.

(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:

(a) Screening which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, or certified alcohol and drug counselor to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas which may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing which shall:

1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. On-site at the behavioral health services organization's facility;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter;

4. May include verbal de-escalation, risk assessment, or cognitive therapy;

5. Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Certified alcohol and drug counselor;

6. Shall be followed by a referral to noncrisis services, if applicable; and

7. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services which shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
2. Be provided for a duration of less than twenty-four (24) hours;
3. Not be an overnight service; and
4. Be a crisis response in a home or community setting to provide an immediate evaluation, triage, and access to acute substance use disorder services including treatment and supports to:
 - a. Reduce symptoms or harm; or
 - b. Safely transition an individual in an acute crisis to appropriate crisis stabilization and detoxification supports or services;
5. Be provided by a:
 - a. Behavioral health professional;
 - b. Behavioral health professional under clinical supervision; or
 - c. Certified alcohol and drug counselor; and
6. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;
- (f) Day treatment which shall:
 1. Be a nonresidential, intensive treatment program designed for children who:
 - a. Have a substance use disorder, mental health disorder, or co-occurring disorder;
 - b. Are under twenty-one (21) years of age; and
 - c. Are at high risk of out-of-home placement due to a behavioral health issue;
 2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;
 3. Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;
 4. Include the following:
 - a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - b. Behavior management and social skill training;
 - c. Independent living skills that correlate to the age and development stage of the client; or
 - d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;
 5. Be provided as follows:
 - a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - b. On school days and during scheduled school breaks;
 - c. In coordination with the child's individual educational plan if the child has an individual educational plan;
 - d. By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, or a peer support specialist; and
 - e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and
 6. Not include a therapeutic clinical service that is included in a child's individualized education plan;
- (g) Peer support which shall:
 1. Be provided by a peer support specialist;
 2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;
 3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and
 4. Be identified in the client's plan of care;
- (h) Intensive outpatient program services which shall:
 1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
 2. Be provided at least three (3) hours per day at least three (3)

- days per week;
3. Include the following:
 - a. Individual outpatient therapy;
 - b. Group outpatient therapy;
 - c. Family outpatient therapy unless contraindicated;
 - d. Crisis intervention; or
 - e. Psycho-education during which the client or client's family member shall be:
 - (i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
 - (ii) Taught how to cope with the client's diagnosis or condition in a successful manner;
4. Include a treatment plan which shall:
 - a. Be individualized; and
 - b. Focus on stabilization and transition to a lower level of care;
5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;
6. Include access to a board-certified or board-eligible psychiatrist for consultation;
7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and
8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;
- (i) Individual outpatient therapy which shall:
 1. Be provided to promote the:
 - a. Health and wellbeing of the client; or
 - b. Recovery from a substance related disorder;
 2. Consist of:
 - a. A face-to-face encounter with the client; and
 - b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;
 3. Be aimed at:
 - a. Reducing adverse symptoms;
 - b. Reducing or eliminating the presenting problem of the client; and
 - c. Improving functioning;
 4. Not exceed three (3) hours per day; and
 5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- (j) Group outpatient therapy which shall:
 1. Be provided to promote the:
 - a. Health and wellbeing of the client; or
 - b. Recovery from a substance related disorder;
 2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;
 3. Be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;
 4. Focus on the psychological needs of the client as evidenced in the client's plan of care;
 5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
 6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;
 7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;
 8. Ensure that the group has a deliberate focus and defined course of treatment;
 9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and
 10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior

analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy which shall:

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional or a behavioral health professional under clinical supervision;

(l) Collateral outpatient therapy which shall consist of a face-to-face behavioral health consultation:

1. With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Service planning which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of mental disability;

2. Restore a client's functional level to the client's best possible functional level; and

3. Develop a service plan which:

a. Shall be directed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan;

(n) Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(o) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(p) Assertive community treatment for mental health disorders which shall:

1. Include assessment, treatment planning, case management, psychiatric services, medication prescribing and monitoring, individual and group therapy, peer support, mobile crisis services,

mental health consultation, family support, and basic living skills;

2. Be provided by a multidisciplinary team of at least four (4) professionals, including a psychiatrist, nurse, case manager, peer support specialist and any other behavioral health professional or behavioral health professional under clinical supervision; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(q) Comprehensive community support services which shall:

1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

a. Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;

c. Improve emotional regulation skills;

d. Improve crisis coping skills; and

e. Develop and enhance interpersonal skills; and

3. Be provided by a;

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Community support associate;

d. Licensed behavior analyst; or

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(r) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability which shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

a. Improving daily living skills;

b. Self-monitoring of symptoms and side effects;

c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Peer support specialist; or

(s) Targeted case management services which shall:

1. Include services to one (1) or more of the following target groups:

a. An adult or a child with substance use disorder;

b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

c. A child with a severe emotional disability; or

d. An adult with severe mental illness;

2. Be provided by a case manager as described in Section 4(6), (7), or (8) of this administrative regulation; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and

d. Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:

- (i) Services are furnished according to the client's care plan;
- (ii) Services in the care plan are adequate; and
- (iii) Changes in the needs or status of the client are reflected in the care plan; and
- e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:
 - (i) Access services;
 - (ii) Identify needs and supports to assist the client in obtaining services; and
 - (iii) Identify changes in the client's needs.

Section 7. Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

- (2) A plan of care shall:
 - (a) Describe the services to be provided to the client, including the frequency of services;
 - (b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;
 - (c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;
 - (d) Specify each staff member assigned to work with the client;
 - (e) Identify methods of involving the client's family or significant others if indicated;
 - (f) Specify criteria to be met for termination of treatment;
 - (g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and
 - (h) The date scheduled for review of the plan.
- (3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.
- (4)(a) The plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b) The plan of care shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

- (c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.
- (5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 8. Client Records. (1) A client record shall be maintained for each individual receiving services.

- (2) Each entry shall be current, dated, signed, and indexed according to the service received.
- (3) Each client record shall contain:
 - (a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;
 - (b) Information on the purpose for seeking a service;
 - (c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;
 - (d) Screening information pertaining to the mental health or substance use disorder;
 - (e) If applicable, a psychosocial history;
 - (f) If applicable, staff notes on services provided;
 - (g) If applicable, the client's plan of care;
 - (h) If applicable, disposition;
 - (i) If applicable, assigned status;
 - (j) If applicable, assigned therapists; and
 - (k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.
- (4) Ownership.
 - (a) Client records shall be the property of the organization.
 - (b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

- (a) Retained for six (6) years; or
- (b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by:

- 1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or
- 2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the behavioral health services organization from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 9. Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section 6 of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section 4(14) of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

- (a) Give informed consent to receive a service.
 - 1. An adult shall sign an informed consent to receive a service.
 - 2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;
- (b) Have input into his or her plan of care and be informed of the plan's content;
- (c) Receive individualized treatment;
- (d) File a grievance, recommendation or opinion regarding the services the client receives;
- (e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;
- (f) Confidentiality according to Section 7(6) of this administrative regulation;
- (g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;
- (h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;
- (i) Be treated with consideration, respect, and personal dignity;
- (j) Review his or her client record in accordance with the organization's policy; and
- (k) Receive one (1) free copy of his or her client record.

(5) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:

- (a) Vote in a political election; and
- (b) Reasonable accommodations to afford privacy in bathing and toileting.

(6) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 10. Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section 11. License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 12. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", July 2014 edition, is incorporated by reference.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 25, 2014

FILED WITH LRC: July 15, 2014 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Mynear

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new health facility licensure category called "behavioral health services organizations".

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the minimum requirements for the licensure of behavioral health services organizations which provide behavioral health services to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes establishing licensure standards and procedures to ensure safe,

adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(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 minimum licensure requirements necessary for the operation of behavioral health services organizations.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this new administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization. Upon approval of licensure, behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in applying for licensure as a behavioral health services organization will be required to comply with the licensure standards established in this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this new administrative regulation will be eligible to enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients. Additionally, the anticipated expansion in the number of behavioral health services providers ensures that Medicaid recipients will have access to Medicaid-covered services for the treatment of substance use disorders, mental health disorders, or co-occurring disorders.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from behavioral health services organizations and 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: As a new administrative regulation, the initial fee for licensure as a behavioral health services organization will be \$750, the annual renewal fee will be \$500, and the fee for each extension location will be \$250. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of \$100 will be charged for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of \$750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Under this new administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Cabinet will collect an initial fee of \$750 from each applicant for licensure as a behavioral health services organization. The Cabinet anticipates fifty (50) to seventy-five (75) applicants during the first year. Therefore, the Cabinet may collect between \$37,500 to \$56,250 in licensure fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet will collect an annual renewal fee of \$500 from each licensed behavioral health services organization. The Cabinet anticipates there will be approximately seventy-five (75) licensed behavioral health services organizations operating in subsequent years. Therefore, the Cabinet may collect approximately \$37,500 in licensure fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 902 KAR 20:440E

As part of the Cabinet for Health and Family Service's efforts to enhance access to mental health and substance abuse services, the Office of Inspector General is promulgating this emergency administrative regulation to establish minimum requirements for the operation of "Residential Crisis Stabilization Units". This new level of care will allow entities to become licensed to provide residential crisis stabilization in a category that will be eligible for enrollment in the Kentucky Medicaid Program. The anticipated increase in the number of entities licensed to provide residential crisis stabilization in community-based programs to Medicaid recipients and other individuals with substance use disorder, mental health disorder, or a co-occurring disorder will both enhance patient access to services needed to stabilize a crisis and help prevent admission to a higher level of care. This action must be implemented on an emergency basis in accordance with KRS 13A.190(1)(a) to enhance patient access to residential crisis stabilization services statewide. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (New Emergency Administrative Regulation)

902 KAR 20:440E. Facilities specifications, operation and services; residential crisis stabilization units.

RELATES TO: KRS 200.503(2), 210.005, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319C.010, 335.080, 335.100, 335.300, 335.500, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 216B.042

EFFECTIVE: July 15, 2014

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, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units which serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and which provides crisis services to no more than twelve (12) clients who require overnight stays.

(6) "Peer support specialist" means a paraprofessional who:

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of a:

1. Physician;

2. Psychiatrist;

3. Licensed psychologist;

4. Licensed psychological practitioner;

5. Licensed psychological associate;

6. Licensed clinical social worker;

7. Licensed marriage and family therapist;

8. Licensed professional clinical counselor;

9. Certified social worker;

10. Licensed marriage and family therapist associate;

11. Licensed professional counselor associate;

12. Licensed professional art therapist; or

13. Licensed professional art therapist associate.

(7) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(8) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

(a) Intoxication;

(b) Withdrawal; or

(c) A substance induced mental health disorder.

(9) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3)(a) Name change. A residential crisis stabilization unit shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the unit's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operated until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the unit.

Section 3. Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.

Section 4. Accreditation. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by the:

(a) Joint Commission;

(b) Commission on Accreditation of Rehabilitation Facilities; or

(c) Council on Accreditation.

(2) The cabinet shall revoke the license if the residential crisis stabilization unit fails to become accredited in accordance with subsection (1) of this section or fails to maintain accreditation.

(3) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 5. Administration and Operation. The licensee shall be legally responsible for:

(1) The residential crisis stabilization unit;

(2) The establishment of administrative policy; and

(3) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 6. License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 7. Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:

(a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Violent crime as specified in KRS 439.3401;

3. Criminal offense against a minor as specified in KRS 17.500; or

4. Class A felony.

(2) Prior to initial hire, an out-of-state criminal background

information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth.

(3) A residential crisis stabilization unit shall perform annual criminal record checks as described in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) A personnel record shall be kept on each staff member and shall contain the following items:

- (a) Name and address;
- (b) Verification of all training and experience, including licensure, certification, registration, or renewals;
- (c) Verification of submission to the background check required by subsection (1) of this section;
- (d) Performance appraisals conducted no less than annually; and
- (e) Employee incident reports.

Section 8. Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of each client.

(2) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

- (a) Discharge;
- (b) Transfer; or
- (c) Referral to another service provider, if appropriate.

Section 9. Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances which shall include the following:

(1) A process for filing a written client grievance;

(2) An appeals process with time frames for filing and responding to a grievance in writing;

(3) Protection for a client from interference, coercion, discrimination, or reprisal; and

(4) Conspicuous posting of the grievance procedures in a public area to inform a client of:

- (a) His or her right to file a grievance;
- (b) The process for filing a grievance; and
- (c) The address and telephone number of the cabinet's ombudsman.

Section 10. Services. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide the following services:

- (a) Screening;
- (b) Assessment;
- (c) Treatment planning;
- (d) Individual outpatient therapy;
- (e) Group outpatient therapy; and
- (f) Psychiatric services.

(2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:

- (a) Family therapy; or
 - (b) Peer support by a peer support specialist.
- (3)(a) The services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.
- (b) The service identified in subsection (1)(a) of this section may be provided by a certified alcohol and drug counselor.
- (c) A residential crisis stabilization unit shall have access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.
- (d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.
- (4) If a crisis stabilization program serves adults with a severe

mental illness or substance use disorder and children with severe emotional disabilities:

(a) The programs shall not be located on the same campus; and

(b) The children's program shall serve clients:

- 1. Under the age of eighteen (18); or
- 2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

- (a) Provide treatment for acute withdrawal, if appropriate;
- (b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;
- (c) Have written policies and procedures for:
 - 1. Crisis intervention; and
 - 2. Discharge planning which shall begin at the time of admission and aftercare planning processes;
- (d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs which:

- 1. Address identified needs and achieve goals specified in the treatment plan; and
 - 2. Help promote continuity of care after discharge;
- (f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:

- 1. Every four (4) clients during normal waking hours; and
- 2. Every six (6) clients during normal sleeping hours;

(g) Ensure that administrative oversight of the unit is provided by a staff member who shall be a:

- 1. Behavioral health professional; or
- 2. Behavioral health professional under clinical supervision;

(h) Provide a training program for direct-care staff pertaining to:

- 1. The care of clients in a crisis stabilization unit;
- 2. Detection and reporting of abuse, neglect, or exploitation;
- 3. Emergency and safety procedures;
- 4. Behavior management, including de-escalation training;
- 5. Physical management procedures and techniques;
- 6. Suicide prevention and care; and
- 7. Trauma informed care; and

(i) Assure that each client shall be:

- 1. In need of short-term behavior management and at risk of placement in a higher level of care;
- 2. Able to take care of his or her own personal needs, if an adult;
- 3. Medically able to participate in services; and
- 4. Served in the least restrictive environment available in the community.

Section 11. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, date of birth, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent via signature of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring used in treatment.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the residential crisis stabilization unit from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 12. Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities which shall be:

(a) Provided at the time of admission:

1. To the client; or

2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

(b) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read;

(c) Written in language that is understandable to the client;

(d) Conspicuously posted in a public area of the facility; and

(e) Cover the following:

1. The right to treatment, regardless of race, religion, or ethnicity;

2. The right to recognition and respect of personal dignity in the provision of all treatment and care;

3. The right to be provided treatment and care in the least restrictive environment possible;

4. The right to an individualized plan of care;

5. The right of the client, including the client's parents or guardian if the client is a minor, to participate in treatment planning;

6. The nature of care, procedures, and treatment provided;

7. The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;

8. The right to be free from verbal, sexual, physical, or mental abuse; and

9. The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

(2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of care, including:

(a) Visitation by family or significant others in a suitable area of the facility; and

(b) Telephone communications with family or significant others at a reasonable frequency.

(3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor.

(b) Documentation shall be included in the client's record of any privacy limitation.

(4) Information shall be provided to the client, or the client's parent or guardian if the client is a minor, regarding the use and disposition of special observation and audio visual techniques, which may include the following:

(a) One (1) way vision mirror;

(b) Audio recording;

(c) Video tape recording;

(d) Television;

(e) Movie; or

(f) Photographs.

(5)(a) If the residential crisis stabilization unit serves children as described in Section 10(4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.

(b) Behavior management techniques shall be explained fully to each client and the client's parent, guardian, or other legal representative.

(c) The unit shall prohibit cruel and unusual disciplinary measures including the following:

1. Corporal punishment;

2. Forced physical exercise;

3. Forced fixed body positions;

4. Group punishment for individual actions;

5. Verbal abuse, ridicule, or humiliation;

6. Denial of three (3) balanced nutritional meals per day;

7. Denial of clothing, shelter, bedding, or personal hygiene needs;

8. Denial of access to educational services;

9. Denial of visitation, mail, or phone privileges for punishment;

10. Exclusion of the resident from entry to his or her assigned living unit; and

11. Restraint or seclusion as a punishment or employed for the convenience of staff.

(d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(6) If therapeutic holds are used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy which shall describe:

(a) Criteria for appropriate use of therapeutic holds;

(b) Documentation requirements; and

(c) The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities prior to using therapeutic holds.

Section 13. Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies which assure:

(a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and

(b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.

(2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally, and shall prevent further potential abuse while the investigation is in progress.

Section 14. Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

(2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.

(3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.

(4) A copy of the prescription shall be kept in the client record.

(5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.

(6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.

(7) Medication kept by the unit shall be properly labeled.

(8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.

(9) Medication kept in the unit shall be kept in a locked cabinet.

(10) A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).

(11) There shall be a controlled substances record, in which is recorded:

(a) The name of the client;

(b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;

(c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and

(d) The name of the nurse who administered it, or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 15. Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in a bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;

3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;

4. Be equipped with a support mechanism and a clean mattress; and

5. Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

(d) There shall be separate sleeping quarters for males and females.

(e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

(3) Bathrooms.

(a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):

1. Wash basin with hot and cold water;

2. Bath or shower with hot and cold water; and

3. Flush toilet.

(b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

(4) Living area.

(a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.

(b) Each living unit shall be equipped with a:

1. Working sink; and

2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

(5) There shall be adequate lighting, heating, heated water, and ventilation.

(6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.

(8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.

(9) The residential crisis stabilization unit shall establish an infection control system which includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section 16. Facility Specifications. (1) A residential crisis stabilization unit shall:

(a) Be of safe and substantial construction;

(b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;

(c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and

(d) Meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) A residential crisis stabilization unit shall:

(a) Have a written emergency plan and procedures for meeting potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 17. Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", July 2014 edition, is incorporated by reference.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 24, 2014

FILED WITH LRC: July 15, 2014 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Mynear,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new licensure category for "residential crisis stabilization units".

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the minimum requirements for the licensure of residential crisis stabilization units which are community-based programs that offer an array of services to stabilize a crisis and divert individuals from placement in a higher level of care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes establishing licensure standards and procedures to ensure safe,

adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(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 minimum licensure requirements necessary for the operation of residential crisis stabilization units.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this new administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

(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 interested in applying for licensure as a residential crisis stabilization unit will be required to comply with the licensure standards established in this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this new administrative regulation will be eligible to enroll in the Kentucky Medicaid Program. Additionally, residential crisis stabilization units help ensure that Medicaid recipients will have access to treatment needed to stabilize a child with a severe emotional disability, adult with severe mental illness, or individual with substance use disorder.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) OIG inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from residential crisis stabilization units and 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: As a new administrative regulation, the initial fee for licensure as a residential crisis stabilization unit will be \$750 and the annual renewal fee will be \$500. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of \$100 will be charged

for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of \$750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Under this new administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Cabinet will collect an initial fee of \$750 from each applicant for licensure as a residential crisis stabilization unit.

(b) How 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 Cabinet will collect an annual renewal fee of \$500 from each licensed residential crisis stabilization unit.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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, July 8, 2014)

16 KAR 4:060. Certificate renewals and[successful] teaching experience.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.020 provides that the validity and terms for the renewal of a certificate shall be determined by the laws and administrative regulations in effect at the time the certificate was issued. This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

Section 1. Certificate Renewals. (1) If the renewal of a teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from the Planned Fifth-Year Program.

(2) Except as provided in KRS 161.030(3), a teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals.

(3)(a) A certificate shall be renewed for subsequent five (5) year periods upon the completion of:

1. Three (3) years of successful teaching experience as established in Section 2 of this administrative regulation; or

2. At least six (6) semester hours of credit or the equivalent in professional development defined in 16 KAR 8:020.

(b) The requirements of this subsection shall apply to teachers who have completed the Fifth Year Program renewal requirements established in 16 KAR 8:020 and 16 KAR 2:010, Section 3.

(4) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

(5)(a) Upon expiration, a regular certificate shall be extended for one (1) time for the one (1) year period immediately following the expiration date if:

1. a. Until December 31, 2014, an application for the extension is submitted using Form TC-2; or

b. Beginning January 1, 2015, an application for the extension is submitted using Form CA-2;

2. The certificate holder has completed at least one-third (1/3) of the renewal requirements; and

3. The extension is recommended by the employing school superintendent.

(b) If the requirements of paragraph (a) of this subsection are met, the remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement.

(6)(a) Experience in the armed forces of the United States of America shall be accepted toward the renewal of a teaching certificate in lieu of required teaching experience as established in Section 2 of this administrative regulation, if the applicant held a valid certificate prior to entering military service.

(b) The validity period of a certificate held by a person at the time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

(7) For a certificate requiring teaching experience for renewal, experience as a substitute teacher shall be accepted in lieu of required teaching experience as established in Section 2 of this administrative regulation if the holder of the certificate:

(a) Was employed officially by the local board of education;

(b) Was paid through the board of education; and

(c) Substituted in his or her certification area no less than thirty (30) teaching days per semester.

(8) Work experience at the Education Professional Standards Board, Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and secondary education shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(9) Teaching experience at a regionally- or nationally-accredited institution of higher education in the academic subject area for which the teacher holds certification shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(10)(a) Until December 31, 2014, application for certification renewal shall be made on Form TC-2.

(b) Beginning January 1, 2015, application for certification renewal shall be made on Form CA-2.

Section 2.[Successful] Teaching Experience for Certificate Issuance and Renewal. (1)[Successful] Teaching experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(2) A full year of experience shall include at least 140 teaching days of employment performed within the academic year.

(3) A half year of experience shall include at least seventy (70) teaching days of employment performed within an academic semester.

(4) The experience shall include employment on at least a half-time basis as defined in 16 KAR 7:010.

(5) Except as provided by Section 1(7), (8), or (9) of this administrative regulation, the experience shall[may] include employment in either a public school or a regionally- or nationally-accredited nonpublic school.

(6) Experience as a home school teacher shall not be accepted as[successful] teaching experience.

(7)(a) Until December 31, 2014, the superintendent of the employing district or chief school officer of the employing nonpublic school shall verify[successful] teaching experience on the certification application, Form TC-1, which is incorporated by reference in 16 KAR 2:010, for initial certification or Form TC-2 for certificate renewal.

(b) Beginning January 1, 2015, the superintendent of the employing district or chief school officer of the employing nonpublic school shall verify teaching experience on the Form CA-1, which is incorporated by reference in 16 KAR 2:010, for initial certification or Form CA-2 for certificate renewal.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form CA-2", 03/2014; and

(b) "Form TC-2", rev. 10/03, ~~is incorporated by reference~~.

(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 40602, 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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at IJC on Health and Welfare, June 18, 2014)

201 KAR 8:016. Registration of dental laboratories.

RELATES TO: KRS 313.021, 313.022, 313.550
STATUTORY AUTHORITY: KRS 313.021(1)(a), (c), 313.022(1)(c), 313.080, 313.090, 313.100
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) requires the board to govern dental laboratories. KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of dental laboratory registration with the board. This administrative regulation establishes fees for the issuance, renewal, and reinstatement of registrations of dental laboratories with the board.

Section 1. (1) Each commercial dental laboratory operating, doing business, or intending to operate or do business in the state shall register with the board and pay the fee established in Sections 4 and 8 of this administrative regulation.

(2) A dental laboratory shall be considered operating or doing business within this state if its work product is prepared pursuant to a written authorization originating within this state.

Section 2. ~~[(1)]~~The board shall not issue a registration to a commercial dental laboratory unless the applying dental laboratory is operated under the ~~[direction and continual]~~supervision of at least one (1) certified dental technician (CDT) or dentist licensed in this state in accordance with KRS 313.550. ~~[(2) A certified dental technician shall not supervise more than one (1) dental laboratory.]~~

Section 3. ~~[The board may subject a dental laboratory to disciplinary action pursuant to KRS 313.080 and KRS 313.100]~~If the dental laboratory has violated any provision of KRS Chapter 313 or 201 KAR Chapter 8, the dental laboratory shall be subject to disciplinary action pursuant to KRS 313.080 and 313.100.

Section 4. Each commercial dental laboratory shall pay a fee of \$150 to the board before a registration shall be issued to the applicant.

Section 5. Upon the granting of a registration, the board shall assign to that laboratory a dental registration number. The laboratory registration number shall appear on all invoices or other correspondence of the laboratory.

Section 6. A dentist shall use only those services of a commercial dental laboratory that is duly registered with the board as required by this administrative regulation. A dentist shall include the registration number of the dental laboratory on the dentist's work order.

Section 7. Each commercial dental laboratory operating, doing business, or intending to operate or do business within the state shall submit an Application for Registration of Dental Laboratory or Renewal of Registration of Dental Laboratory to the board on a form provided by the board accompanied with the registration or renewal fee required. The application shall include:

- (1) The name, mailing address, phone number, and e-mail address of the laboratory;
- (2) The physical address of the laboratory if different from the mailing address;
- (3) The name and CDT number of the supervising CDT or the name and license number of the supervising dentist who is licensed in this state;
- (4) A statement that the laboratory meets the infectious

disease control requirements under Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service;

(5) An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory will provide material disclosure to the prescribing dentist that contains the U.S. Food and Drug Administration registration number of all patient contact materials contained in the prescribed restoration in order that the dentist may include those numbers in the patient's record; and

(6) An acknowledgement by the supervising CDT or dentist who is licensed in this state that he or she[they] will disclose to the prescribing dentist the point of origin of the manufacture of the prescribed restoration. If the restoration was partially or entirely manufactured by a third-party provider, the point of origin disclosure shall identify the portion manufactured by a third-party provider and the city, state, and country of the[such] provider; and

~~(7) Any other relevant information deemed necessary by the board].~~

Section 8. Each commercial dental laboratory registered with the board shall be required to renew its registration before July 31 each year by completing and submitting a Renewal of Registration of Dental Laboratory form and paying a fee of \$150.

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

(a) "Application for Registration of Dental Laboratories", June[March] 2014[Laboratory, "November 2013]; and

(b) "Renewal Application for[of] Registration of Dental Laboratories", March 2014[Laboratory, "November 2013].

(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>.

JASON E. FORD, DMD, President

APPROVED BY AGENCY: March 8, 2014

FILED WITH LRC: March 13, 2014 at 2 p.m.

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GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at ARRS, July 8, 2014)

201 KAR 8:571. Registration of dental assistants.

RELATES TO: KRS 214.615, 313.030, 313.045, 313.050, 313.080, 313.130

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a), (b), (c), 313.030(3), 313.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.045(1) requires the board to promulgate administrative regulations relating to requirements and procedures for registration, duties, training, and standards of practice for dental assistants. This administrative regulation establishes the requirements and procedures for registration, duties, training, and standards of practice for dental assistants.

Section 1. Definitions. (1) "Coronal polishing" means a procedure that is the final stage of a dental prophylaxis on the clinical crown of the tooth after a dentist or a hygienist has verified there is no calcareous material.

(2) "Dental assistant" mean a person who is directly involved with the care and treatment of a patient under the direct supervision of a dentist and performs reversible procedures delegated by dentist licensed in the Commonwealth.

Section 2. General Registration Requirements and General Training Requirements. (1) A dentist licensed in the Commonwealth shall register all dental assistants in his or her practice on the Application for Renewal of Dental Licensure incorporated by reference in 201 KAR 8:530.

(2) The dentist shall retain in the personnel file for the registered dental assistant the following:

(a) A copy of the certificate of completion issued for the completion of the Coronal Polishing Course if the course has been taken by the dental assistant;

(b) A copy of the certificate of completion issued for the completion of the Radiation Safety Course if the course has been taken by the dental assistant;

(c) A copy of the certificate of completion issued for the completion of the Radiation Techniques Course if the course has been taken by the dental assistant;

(d) A copy of the certificate of completion issued for the completion of the Starting Intravenous Access Lines if the course has been taken by the dental assistant;

(e) A copy of proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association, as incorporated by reference in 201 KAR 8:531; and

(f) A statement of the competency of procedures delegated to the dental assistant from the delegated duties list that includes the name of the:

1. [(i)] Individual trained; and

2. [(ii)] Licensee attesting to the competency of the Dental Assistant.[-]

Section 3. Coronal Polishing Requirements. (1) A registered dental assistant may perform coronal polishing. If coronal polishing is performed by a registered dental assistant, the assistant shall have:

(a) Completed the training described in subsection (2) of this section[administrative regulation]; and

(b) Obtained a certificate from the authorized institution.

(2) The required training shall consist of an eight (8) hour course taught at an institution of dental education accredited by the Council on Dental Accreditation to include the following:

(a) Overview of the dental team;

(b) Dental ethics, jurisprudence, and legal understanding of procedures allowed by each dental team member;

(c) Management of patient records, maintenance of patient privacy, and completion of proper charting;

(d) Infection control, universal precaution, and transfer of disease;

(e) Personal protective equipment and overview of Occupational Safety and Health Administration requirements;

(f) Definition of plaque, types of stain, calculus, and related terminology and topics;

(g) Dental tissues surrounding the teeth and dental anatomy and nomenclature;

(h) Ergonomics of proper positioning of patient and dental assistant;

(i) General principles of dental instrumentation;

(j) Rationale for performing coronal polishing;

(k) Abrasive agents;

(l) Coronal polishing armamentarium;

(m) Warnings of trauma that can be caused by improper techniques in polishing;

(n) Clinical coronal polishing technique and demonstration;

(o) Written comprehensive examination covering the material listed in this section, which shall be passed by a score of seventy-five (75) percent or higher;

(p) Completion of the reading component as required by subsection (3) of this section[administrative regulation]; and

(q) Clinical competency examination supervised by a dentist licensed in Kentucky, which shall be performed on a live patient.

(3) A required reading component for each course shall be prepared by each institution offering coronal polishing education that shall:

(a) Consist of the topics established in subsection (2)(a) to (n)

of this section;

(b) Be provided to the applicant prior to the course described in subsection (2) of this section[administrative regulation]; and

(c) Be reviewed and approved by the board based on the requirements of subsection (2)(a) to (n) of this section.

(4) The institutions of dental education approved to offer the coronal polishing course in Kentucky shall be:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program; and

(d) Kentucky Community Technical College System Dental Hygiene or Dental Assisting Programs.

(5) An institution of dental education from a state outside of Kentucky meeting the standards of the institutions listed in subsection (4) of this section shall be approved upon request to the Kentucky Board of Dentistry.

Section 4. X-rays by Registered Dental Assistants. A registered dental assistant may take x-rays under the direct supervision of a dentist licensed in Kentucky. If a registered dental assistant takes x-rays under the direct supervision of a dentist licensed in Kentucky, the dental assistant shall have completed:

(1) A six (6) hour course in dental radiography safety; and

(2) Four (4) hours of instruction in dental radiography technique while under the employment and supervision of the dentist in the office or a four (4) hour course in radiography technique.

Section 5. Requirements for Starting Intravenous Access Lines. (1) An individual registered as a dental assistant in Kentucky and not subject to disciplinary action under KRS Chapter 313 who desires to start intravenous (IV) access lines while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall submit documentation to the licensed dentist for whom the registered dental assistant will be providing services proving successful completion of a board-approved course in starting IV access lines based on:

(a) Patient Safety Techniques;

(b) Anatomy and physiology of the patient;

(c) Techniques in starting and maintaining an IV access line; and

(d) Appropriate methods of discontinuing an IV access line.

(2) A registered dental assistant shall not start an IV access line if the individual has not completed a Board approved course in IV access lines.

Section 6. A dental assistant operating under this administrative regulation shall be under the direct supervision of the dentist licensed in the Commonwealth. The dentist licensed in the Commonwealth shall accept sole responsibility for the actions of the dental assistant or dental auxiliary personnel while in the performance of duties in the dental office.

Section 7. Incorporation by Reference. (1) "Delegated Duty List", May 2014[~~November 2013~~][July 2010], is incorporated by reference.

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TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 8, 2014)

**301 KAR 1:201. Taking of fish by traditional~~[Recreational]~~
fishing methods~~[limits]~~.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted and head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(11) "Slot limit" means a size range of a fish species that shall be released by an angler.

(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide~~[Size] Limits~~~~[Daily Creel Limits]~~ and Requirements~~[Possession Limits]~~. (1) A person taking fish by traditional methods fishing ~~from~~~~[in]~~ public or private waters using traditional fishing methods shall observe the following daily creel limits and size limits, except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180.

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit~~;~~~~[f.]~~

(b) Rock bass daily creel limit, fifteen (15)~~;~~~~[f.]~~

(c) Sauger, walleye, and their hybrids daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger~~;~~~~[f.]~~

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches~~;~~~~[f.]~~

(e) Chain pickerel daily creel limit, five (5); no size limit~~;~~~~[f.]~~

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a

daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer~~;~~~~[f.]~~

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches~~;~~~~[f.]~~

(h) Crappie daily creel limit, thirty (30); no size limit~~;~~~~[f.]~~

(i) Trout.

1. No culling statewide.

2. Rainbow trout and brown trout daily creel limit, singly or in combination, eight (8), no more than three (3) of which shall be brown trout~~;~~ no size limit on rainbow trout; twelve (12) inch size limit on brown trout~~;~~

3. No size limit on rainbow trout.

4. Twelve (12) inch size limit on brown trout.

5. Brook trout, catch and release only~~;~~~~[f.]~~

(j) Redear sunfish daily creel limit, twenty (20); no size limit~~;~~~~[f.]~~

(k) Yellow bass daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the following methods:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

- (a) An insect;
- (b) Minnow;
- (c) Fish egg;
- (d) A worm;
- (e) Corn;
- (f) Cheese;
- (g) Cut bait; or
- (h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.
- (13) The fishing season shall be open year round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (76) of this section:

- (1) AJ Jolly Lake. A person shall release all flathead catfish.
- (2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook.
- (3) Barkley Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).
 - (c) Sauger size limit, fourteen (14) inches.
 - (4) Barren River Lake.
 - (a) Crappie size limit, nine (9) inches.
 - (b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.
 - (c) Barren River Lake shall extend up:
 - 1. Barren River to the Highway 100 bridge;
 - 2. Long Creek to the Highway 100 bridge;
 - 3. Beaver Creek to the Highway 1297 bridge;
 - 4. Skaggs Creek to the Mathews Mill Road bridge; and
 - 5. Peter Creek to the Peter Creek Road bridge.
 - (5) Beaver Lake, Anderson County.
 - (a) Largemouth bass size limit, fifteen (15) inches.
 - (b) Channel catfish size limit, twelve (12) inches.
 - (c) A person shall not possess shad or use shad as bait.
 - (6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait.
 - (7) Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches.
 - (8) Boltz Lake, Grant County.
 - (a) A person shall not possess shad or use shad as bait.
 - (b) Channel catfish size limit, twelve (12) inches.
 - (9) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait.
 - (10) Buckhorn Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Muskellunge size limit, thirty-six (36) inches.
 - (c) Crappie size limit, nine (9) inches.
 - (11) Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches.
 - (12) Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches.
 - (13) Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait.
 - (14) Carr Creek Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Crappie size limit, nine (9) inches.
 - (15) Carter Caves State Park Lake, Carter County.
 - (a) Fishing shall be during daylight hours only.
 - (b) Largemouth bass.
 - 1. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 - 2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.
 - (c) A person shall not possess shad or use shad as bait.
 - (16) Cave Run Lake.
 - (a) Largemouth bass. There shall be a slot limit between

- thirteen (13) and sixteen (16) inches.
 - (b) Smallmouth bass size limit, eighteen (18) inches.
 - (c) Muskellunge size limit, thirty-six (36) inches.
 - (17) Cedar Creek Lake, Lincoln County.
 - (a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).
 - (b) Channel catfish size limit, twelve (12) inches.
 - (c) A person shall not possess shad or use shad as bait.
 - (18) Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.
 - (19) Corinth Lake, Grant County.
 - (a) A person shall not possess shad or use shad as bait.
 - (b) Channel catfish size limit, twelve (12) inches.
 - (20) Cumberland Lake shall extend up:
 - (a) The Cumberland River to Cumberland Falls;
 - (b) The Big South Fork to Devils Jump;
 - (c) The Rockcastle River to The Narrows; and
 - (d) The Laurel River to Laurel River Dam:
 - 1. Largemouth bass size limit, fifteen (15) inches.
 - 2. Smallmouth bass size limit, eighteen (18) inches.
 - 3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).
 - 4. Crappie size limit, ten (10) inches.
 - (21) Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches.
 - (22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except for a portion of Hatchery Creek in Russell County as established in subsection (38) of this section.
 - (a) Brown trout size limit, twenty (20) inches; daily creel limit one (1), with no culling.
 - (b) Brook trout size limit, fifteen (15) inches; daily creel limit one (1), with no culling.
 - (c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
 - (d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
 - (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
 - (23) Dale Hollow Lake.
 - (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
 - (b) Walleye and any walleye hybrid daily creel limit, five (5); size limit, sixteen (16) inches.
 - (c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.
 - (d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.
 - (e) Largemouth bass size limit, fifteen (15) inches.
 - (f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.
 - (g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15).
 - (24) Dewey Lake.
 - (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 - (b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
 - (25) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait.
 - (26) Doe Run Lake, Kenton County.
 - (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 - (b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait:~~1.7~~
 (27) Dog Fork, Wolfe County. A person shall:
~~(a) only fish with an artificial bait with a single hook; and~~
~~(b) Release brook trout;1.7~~
 (28) Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.
~~(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.~~
~~(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;1.7~~
 (29) Elmer Davis Lake, Owen County.
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (b) Channel catfish size limit, twelve (12) inches.
 (c) A person shall not possess shad or use shad as bait:~~1.7~~
 (30) Fishtrap Lake.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches.
 (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches:~~1.7~~
 (31) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1):~~1.7~~
 (32) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches:~~1.7~~
 (33) General Butler State Park Lake, Carroll County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait:~~1.7~~
 (34) Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches:~~1.7~~
 (35) Greenbo Lake, Greenup County.
 (a) A person shall not possess shad or use shad as bait.
 (b) Bluegill and sunfish daily and possession limit, fifteen (15) fish:~~1.7~~
 (36) Green River Lake.
 (a) Crappie size limit, nine (9) inches.
 (b) Muskellunge size limit, thirty-six (36) inches:~~1.7~~
 (37) Guist Creek Lake, Shelby County. Channel catfish size limit twelve (12) inches:~~1.7~~
 (38) Hatchery Creek, Russell County.
(a) A person fishing for trout in the upper rip-rap area of the creek shall follow the size and creel limits for trout for the Cumberland River below Wolf Creek Dam established in subsection (22) of this section.
(b) A person fishing for trout in the lower portion of the creek, as denoted by signs shall:
1. Only use artificial bait; and
2. Release all trout;1.7
 (39) Jerrico Lake, Henry County.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait:~~1.7~~
 (40)~~(39)~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
 (b) Crappie size limit, ten (10) inches; daily limit, twenty (20).
 (c) Sauger size limit, fourteen (14) inches:~~1.7~~
 (41)~~(40)~~ Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches:~~1.7~~
 (42)~~(41)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches:~~1.7~~
 (43)~~(42)~~ Lake Malone, Muhlenburg and Logan County.
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
 (b) Channel catfish size limit, twelve (12) inches:~~1.7~~

~~(44)~~(43)~~~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait:~~1.7~~
~~(45)~~(44)~~~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait:~~1.7~~
~~(46)~~(45)~~~~ Lake Reba, Madison County.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit three (3).
 (b) Channel and blue catfish size limit, twelve (12) inches.
 (c) A person shall not possess shad or use shad as bait:~~1.7~~
 (47)~~(46)~~ Lake Shelby, Shelby County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait:~~1.7~~
 (48)~~(47)~~ Laurel River Lake.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).
 (c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15):~~1.7~~
 (49)~~(48)~~ Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches:~~1.7~~
 (50)~~(49)~~ Leary Lake, Grant County.
 (a) A person shall not fish except during daylight hours.
 (b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (c) Channel catfish daily limit, four (4):~~1.7~~
 (51)~~(50)~~ Lincoln Homestead Lake, Washington County.
 (a) A person shall not fish except during daylight hours.
 (b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (c) Channel catfish daily creel limit, four (4).
 (d) A person shall not possess shad or use shad as bait:~~1.7~~
 (52)~~(51)~~ Marion County Lake.
 (a) Largemouth bass size limit, fifteen (15) inches.
 (b) A person shall not possess shad or use shad as bait:~~1.7~~
 (53)~~(52)~~ McNeely Lake, Jefferson County.
 (a) Channel and blue catfish size limit, twelve (12) inches.
 (b) A person shall not possess shad or use shad as bait:~~1.7~~
 (54)~~(53)~~ Mill Creek Lake, Powell County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) A person shall not possess shad or use shad as bait:~~1.7~~
 (55)~~(54)~~ New Haven Optimist Lake, Nelson County.
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
 (b) Channel catfish daily creel limit, four (4).
 (c) A person shall not possess shad or use shad as bait:~~1.7~~
 (56)~~(55)~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.
 (b) Crappie size limit, nine (9) inches:~~1.7~~
 (57)~~(56)~~ Ohio River.
 (a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.
 (b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.
(c) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.
(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.
(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;1.7
 (58)~~(57)~~ Otter Creek, Meade County.
 (a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

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(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;~~[f.]~~

~~(59)[(58)]~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;~~[f.]~~

~~(60)[(59)]~~ Paintsville Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches;~~[f.]~~

~~(61)[(60)]~~ Parched Corn Creek, Wolfe County. A person shall:

~~(a)~~ only fish with an artificial bait with a single hook;~~[f.]~~ and

~~(b)~~ Release brook trout;~~[f.]~~

~~(62)[(61)]~~ Pennyrite Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;~~[f.]~~

~~(63)[(62)]~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;~~[f.]~~

~~(64)[(63)]~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

~~(a)~~ only fish with an artificial bait with a single hook;~~[f.]~~ and

~~(b)~~ Release brook trout;~~[f.]~~

~~(65)[(64)]~~ Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;~~[f.]~~

~~(66)[(65)]~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;~~[f.]~~

~~(67)[(66)]~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;~~[f.]~~

~~(68)[(67)]~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

~~(a)~~ only fish with an artificial bait with a single hook;~~[f.]~~ and

~~(b)~~ Release brook trout;~~[f.]~~

~~(69)[(68)]~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait;~~[f.]~~

~~(70)[(69)]~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;~~[f.]~~

~~(71)[(70)]~~ Simpson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;~~[f.]~~

~~(72)[(71)]~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);~~[f.]~~

~~(73)[(72)]~~ Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;~~[f.]~~

~~(74)[(73)]~~ Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1);~~[f.]~~

~~(75)[(74)]~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; ~~and~~~~[f.]~~

~~(76)[(75)]~~ Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through ~~(n)[(m)]~~ of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to

Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

~~(j)~~ Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

~~(k)[(j)]~~ Middle Fork of Red River in Natural Bridge State Park in Powell County;

~~(l)[(k)]~~ Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

~~(m)[(l)]~~ Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

~~(n)[(m)]~~ Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 5. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 6. Creel and Size Limits for Special Lakes and Ponds.

(1) The requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water listed in subsection (2) of this section:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Channel catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); and

(d) Rainbow trout daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) Bloomfield Park Lake, Nelson County;

(d) Bob Noble Park Lake, Nelson County;

(e) Brickyard Pond, Knox County;

(f) Camp Ernst, Boone County;

(g) Carlson Lake, Meade County in Fort Knox;

(h) Cherokee Park Lake, Jefferson County;

(i) Dickerson Lake, Meade County in Fort Knox;

(j) Easy Walker Park Pond, Montgomery County;

(k) Fisherman's Park lakes, Jefferson County;

(l) Kingdom Come State Park Lake, Harlan County;

(m) Jacobsen Park Lake, Fayette County;

(n) James D. Beville Park Lake, Grayson County;

(o) Lake Mingo, Jessamine County;

(p) Lake Pollywog, Grant County;

(q) Lower Sportsman's Lake, Franklin County;

(r) Lusby Lake, Scott County;

(s) Madisonville City Park lakes, Hopkins County;

(t) Martin County Lake, Martin County;

(u) Maysville-Mason County Recreation Park Lake, Mason County;

~~(v)~~ Middleton Mills Long Pond, Kenton County;

~~(w)[(v)]~~ Middleton Mills Shelterhouse Pond, Kenton County;

~~(x)[(w)]~~ Mike Miller Park Lake, Marshall County;

~~(y)[(x)]~~ Miles Park lakes, Jefferson County;

~~(z)[(y)]~~ Millennium Park Pond, Boyle County;

~~(aa)[(z)]~~ Panther Creek Park Lake, Daviess County;

(bb)(aa) Prisoners Lake, Kenton County;
 (cc)(bb) Scott County Park Lake, Scott County;
 (dd)(cc) Southgate Lake, Campbell County;
 (ee)(dd) Three Springs Lake, Warren County;
 (ff)(ee) Tom Wallace Park Lake, Jefferson County;
 (gg)(ff) Upper Sportsman's Lake, Franklin County;
 (hh)(gg) Watterson Park Lake, Jefferson County;
 (ii)(hh) Waverly Park Lake, Jefferson County;
 (jj)(ii) Waymond Morris Park Lake, Daviess County;
 (kk)(jj) Whitehall Park Lake, Madison County; and
 (ll)(kk) Yellow Creek Park Lake, Daviess County.

MATT SAWYERS, Acting Commissioner

LINDY CASEBIER, Deputy Secretary

For ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 10 a.m.

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 8, 2014)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, July 8[May 15], 2014[July 26, 2013], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)
 RCC 02-02-02 Inmate Personal Funds (Amended 05/15/12)
 RCC 02-02-05 Inmate Canteen Services (Amended 05/15/12)
 RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)
 RCC 06-03-01 Records Release of Information (Amended 05/15/12)
 RCC 08-01-01 Fire Prevention (Amended 7/26/13)
 RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)
 RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Amended 05/15/14[7/26/13])
 RCC 09-29-01 Tobacco Free Environment (Added 05/15/12)
 RCC 10-01-02 Temporary Holding Cell Guidelines (Amended 7/8/14[05/15/14][7/26/13])
 RCC 11-01-01 Food Service Guidelines (Amended 05/15/12)
 RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 7/8/14[5/15/14][05/15/12])
 RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 05/15/12)
 RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance (Amended 05/15/12)
 RCC 12-01-02 Bed Areas (Amended 7/8/14[05/15/14][05/15/12])

RCC 12-01-03 General Guidelines for Living Units (Amended 7/8/14[05/15/14][05/15/12])
 RCC 12-02-01 Laundry Services (Amended 05/15/14[05/15/12])
 RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 05/15/12)
 RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/14[05/15/12])
 RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
 RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 05/15/14[05/15/12])
 RCC 13-03-01 Dental Procedures and Sick Call (Amended 05/15/14[05/15/12])
 RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)
 RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 05/15/14[7/26/13])
 RCC 13-07-03 Use of Pharmaceutical Products (Amended 05/15/14[05/15/12])
 RCC 13-07-04 Self-Administered Medication Program (Amended 7/26/13)
 RCC 13-09-01 Notification of an Inmate's Family Due to Serious Illness, Surgery, or Death (Amended 05/15/12)
 RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12)
 RCC 13-11-01 Informed Consent (Amended 05/15/12)
 RCC 13-13-01 Identification and Transfer Guidelines for Inmates with Psychological, Psychiatric or Severe Medical Disabilities (Amended 05/15/14[05/15/12])
 RCC 13-16-01 Specialized Health Services (Amended 7/8/14[05/15/14][05/15/12])
 RCC 13-18-01 Infection Control (Amended 05/15/12)
 RCC 13-19-01 Medical Waste Management (Amended 05/15/12)
 RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12)
 RCC 13-21-01 Mental Health Services (Amended 05/15/12)
 RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 05/15/12)
 RCC 14-01-01 Inmate Rights and Responsibilities (Amended 05/15/12)
 RCC 14-02-01 Legal Services Program (Amended 05/15/12)
 RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
 RCC 16-01-01 Inmate Visiting (Amended 05/15/14[7/26/13])
 RCC 16-01-02 Restricted Visitation (Added 7/26/13)
 RCC 16-02-01 Telephone Communications (Amended 05/15/12)
 RCC 16-03-01 Mail Regulations (Amended 7/26/13)
 RCC 16-04-01 Parole Hearings: Media and Visitors (Added 7/26/13)
 RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 05/15/12)
 RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 05/15/14[7/26/13])
 RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 05/15/14[05/15/12])
 RCC 18-01-01 Classification (Amended 05/15/14[05/15/12])
 RCC 19-01-01 Job and Program Assignments (Amended 05/15/14[7/26/13])
 RCC 20-01-01 Education Program (Amended 05/15/14[05/15/12])
 RCC 20-01-03 Vocational Horticulture Program (Amended 7/8/14[05/15/14][05/15/12])
 RCC 21-01-01 Library Services (Amended 05/15/14[7/26/13])
 RCC 22-01-01 Recreation and Inmate Activities (Amended 05/15/12)
 RCC 22-03-01 Inmate Clubs and Organizations (Amended 7/26/13)
 RCC 22-03-02 Alcohol Anonymous and Narcotics Anonymous Club Sponsored Picture Project (Amended 7/26/13)
 RCC 22-04-01 Arts and Crafts Program (Amended 05/15/14[7/26/13])
 RCC 23-01-01 Religious Services (Amended 05/15/14[7/26/13])

RCC 24-01-01 ~~05/15/14~~~~05/15/12~~)
Social Services and Counseling (Amended
~~05/15/14~~~~05/15/12~~)
RCC 25-01-01 Furloughs (Amended 05/15/12)
RCC 25-05-01 Inmate Discharge Procedure (Amended
~~7/8/14~~~~05/15/14~~~~05/15/12~~)
RCC 26-01-01 Citizens Involvement and Volunteer Services
Program (Amended 7/26/13)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: May 12, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

CONTACT PERSON: Amber Arnett, 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, July 8, 2014)

704 KAR 3:370. Professional Growth and Effectiveness System.

RELATES TO: KRS 156.557, ~~156.800(7)~~, ~~161.740~~

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (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 by/in KRS

156.557(1)(a).

(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers who are rated ineffective in professional practice and have a low overall student growth rating; and
(b)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)~~[(40)]~~ "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)~~[(44)]~~ "Local formative growth measures" is defined by/in KRS 156.557(1)(b).

(13)~~[(42)]~~ "Observation" means a data collection process conducted by a certified observer, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or worksite visits of any duration~~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)~~[(43)]~~ "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)~~[(44)]~~ "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)~~[(45)]~~ "Other professionals" means certified school personnel, except for/and does not include teachers, administrators, assistant principals, or principals.

(17)~~[(46)]~~ "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 are/shall be evaluated.

(20) "Performance rating" means the summative description of a teacher, principal, or assistant principal evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation~~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 Section/Sections 9(1), (2), (3), and (4) and Section 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 Section 7(8)[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 (7)(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 by/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" means each student's rate of change compared to other students with a similar test score history[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, a local school district may 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, shall/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 approve/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 **KRS 156.557 and the requirements of this administrative regulation**~~fall 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 shall 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**

(c) 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 in this subsection for determining the professional practice rating for a teacher. ;

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;

2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) 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. ;

(c) (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. ;

(d) (c) If a teacher is rated ineffective in any domain, the teacher's professional practice rating shall be accomplished, developing, or ineffective. ;

(e) (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. ;

(f) (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

(g) (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, if, 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, if 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 in this subsection to determine a professional practice rating. [f:]

(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. [f:]

(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. [f:]

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing. [f:] 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 ~~[a professional growth]~~ 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 the following 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 have the presence of evaluatee's chosen representative present at the hearing.

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. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request [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", July/June ~~[May]~~ 2014; and

(h) "Kentucky Professional Growth Plan ~~[Model]~~ for Assistant Principals and Principals", July/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.

VOLUME 41, NUMBER 2 – AUGUST 1, 2014

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 8, 2014)

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

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal ~~regulations~~regulation published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions established in Section 1 of this administrative regulation:

(1) 29 C.F.R. 1926.1-6, revised July 1, 2013;

(2) The revisions to 29 C.F.R. 1926.6 as published in the June 13, 2013 Federal Register, Volume 78, Number 114 and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215; and

(3) The revisions to 29 C.F.R. 1926.6 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2012]; and

(2) The revisions to 29 C.F.R. 1926.6, as published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 8, 2014)

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

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.~~200-1926.203~~

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926.~~200-1926.203~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the

board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.~~[;]~~

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.~~[;]~~

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.~~[;]~~

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.200-1926.203, revised July 1, 2013; and

(2) The revisions to 29 C.F.R. 1926.200-~~1926.202~~ as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215.~~[The construction industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions established in Section 1 of this administrative regulation.~~

Section 3. ~~Incorporation by Reference.~~ (1) The following material is incorporated by reference:

(a) The revisions to 29 C.F.R. 1926.200, 1926.201, 1926.202, and Appendices, as published in the September 12, 2002, Federal Register, Volume 67, Number 177; and

(b) 29 C.F.R. Part 1926, revised as of July 1, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration].

LARRY L. ROBERTS, Chairman

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CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 8, 2014)

803 KAR 2:412. Fall protection.

RELATES TO: KRS 338.015, 338.031, 338.051, 338.061, 29 C.F.R. 1926.500-1926.503

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061(1)~~[and 338.061(1)]~~ require the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance relating to fall protection. This administrative regulation requires employers to comply with federal standards except for certain limited construction activities in which the fall protection trigger height is changed from six (6) feet to ten (10) feet. When engaged in those

limited activities, employers may choose compliance options not provided in the federal standards.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Eave" means the horizontal lower edge of a roof.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Fall restraint system" means a system that:

(a) Is used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness; and

(b) May include lanyards, lifelines, or rope grabs designed for that purpose.

(6) "Guardrail system" is defined in 29 C.F.R. 1926.500(b).

(7) "Leading edge" is defined in 29 C.F.R. 1926.500(b).

(8) "Personal fall arrest system" is defined in 29 C.F.R. 1926.500(b).

(9) "Rake edge" means the roof edge at the gable end of a structure.

(10) "Residential construction" means construction work on a standalone single family dwelling, duplex, threeplex, or fourplex structure.

(11) "Roofing work" is defined in 29 C.F.R. 1926.500(b).

(12) "Safety monitoring system" is defined in 29 C.F.R. 1926.500(b).

(13) "Safety net system" means a system used in accordance with 29 C.F.R. 1926.502(c).

(14) "Slide guard system" means an equipment system that:

(a) Is designed to prevent employees from sliding off a sloped roof to a lower level; and

(b) Consists of manufactured roof brackets used in conjunction with dimensional lumber or may be a site-built system of similar design and dimension.

(15) "Slope" means the roof vertical rise in inches for every horizontal twelve (12) inch length, with:

(a) The horizontal twelve (12) inch length referred to as the run;

(b) The slope referred to as pitch; and

(c) The slope expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as "4 in 12" or "4 on 12" and written as "4 in 12" or "4:12" or "4/12."

(16) "Three (3) points of contact" means either:

(a) One (1) hand and both feet; or

(b) One (1) foot and both hands.

(17) "Visible defect" means saw cuts, warps, twists, holes, splits, breaks, or gouges.

(18) "Walking/working surface" is defined in 29 C.F.R. 1926.500(b).

Section 2. (1) The construction industry shall comply with the following federal regulations, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2013[2014];

(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2013; and

(c) The amendment to 29 C.F.R. 1926.500 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014]; and

(e) The amendment to 29 C.F.R. 1926.500 as published in the August 9, 2010 Federal Register, Volume 75, Number 152].

(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) The ***Non-Mandatory[Nonmandatory]*** Sample Fall Protection Plan for Residential Construction may be used and is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction. (1) General.

(a) While engaged in residential construction activities,

employees working ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section while exposed to any of the following:

1. Unprotected sides and edges;

2. Leading edges;

3. Hoist areas;

4. Form work and reinforcing steel; or

5. Roofing work on roof slopes three (3) in twelve (12) or less.

(b) The employer shall use a measure that meets the criteria established in this section and shall not be required to demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in this section.

(c) If an employer can demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, personal fall arrest systems, or a measure established in this section, for a particular workplace situation, the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.502(k) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section.

(2) Floor system.

(a) Employees engaged in residential construction floor system work exposed to a fall hazard ten (10) feet or more above a lower level to the exterior of the structure being constructed shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(b) Employees engaged in residential construction floor system work exposed to an interior fall hazard ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first joist or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffold system.

2. Successive joists or trusses shall be placed into position and then secured from a secured temporary platform.

3. The temporary platform shall be at least eighteen (18) inches wide and secured.

4. An employee performing the work shall work from the platform and remain on the platform.

(c) Employees engaged in leading edge residential construction floor system work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, from a scaffold system, or from a secured temporary platform at least eighteen (18) inches wide.

2. An employee performing the work shall work from the platform and remain on the platform.

3. After the first row of sheathing has been installed and secured, only employees performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

4. After two (2) rows of sheathing have been installed, only an employee performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

5. All other employees shall remain at least four (4) feet away from the leading edge.

(3) Roof system.

(a) Employees engaged in residential construction roof truss or rafter work ten (10) feet or more above a lower level shall:

1. Be protected by guardrail systems, safety net systems, personal fall arrest systems; or

2. Personal fall restraint systems or implement the measure established in paragraph (b) of this subsection.

(b) The employee releasing the hoist line or installing the bracing shall:

1. Move or work from within the webbing of the truss or within the rafters on a secured temporary platform at least eighteen (18) inches wide; or

2. Maintain three (3) points of contact while moving or working within the webbing of the trusses or within the rafters.

(c) Employees shall not move or work outside the webbing of the trusses or outside the rafters unless utilizing a personal fall arrest system or personal fall restraint system.

(d) Employees engaged in roof sheathing may utilize a slide guard system in accordance with the provisions established in subsection (5) of this section.

(e) Employees engaged in residential construction attic work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or the measures established in this paragraph.

1. Employees shall move or work from within the webbing of the trusses or within the rafters on a secured temporary platform at least eighteen (18) inches wide.

2. Employees shall remain on the platform while performing the work.

(4) Roofing work.

- (a) Supplies or materials shall not be placed or stored within six (6) feet of the roof edge.

- (b) A person shall not ascend, work on, or descend the roof within six (6) feet of the rake edge except while applying or removing roofing materials or equipment.

(c) Warning line systems.

1. Employees engaged in residential construction roofing work ten (10) feet or more above a lower level on roof slopes three (3) in twelve (12) or less shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or a combination of warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, warning line system and personal fall restraint system, or warning line system and safety monitoring system. On roofs fifty (50) feet or less in width, a safety monitoring system alone may be used. Appendix A to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, may be used as a guideline to determine roof width.

2. Employees performing residential construction roofing work between a roof edge and a warning line shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(5) Slide guard systems.

- (a) Employers and employees installing residential construction roof sheathing with a ground to eave height up to twenty-five (25) feet or engaged in residential construction roofing work with a ground to eave height up to twenty-five (25) feet may utilize a slide guard system in accordance with the provisions established in this subsection with a safety monitor system meeting the requirements of 29 C.F.R. 1926.502(h)(1) through (h)(4).

- (b) Slide guards systems shall not be used with a slope less than four (4) in twelve (12) or greater than eight (8) in twelve (12).

- (c) Employers and employees installing residential construction roof sheathing who utilize a slide guard system shall install the slide guard system immediately after the first row of sheathing is installed.

- (d) Slide guard systems shall comply with the following provisions.

1. Each slide guard system shall be installed, utilized, and removed under the supervision of a competent person, as defined in 29 C.F.R. 1926.32(f).

2. Each slide guard system shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.

3. Each slide guard system shall be maintained in accordance with the manufacturer's specifications and recommendations.

4. The manufacturer's specifications shall be available at the jobsite for review if the slide guard system is not utilized and maintained in accordance with this subsection.

5. Each slide guard system shall be inspected for visible defects by a competent person before each work shift and after any occurrence which could affect the slide guard system's structural integrity.

6. For each slide guard system, each damaged or weakened component shall be immediately replaced or repaired.

7. For each slide guard system, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until:

- a. The damaged or weakened component is replaced or repaired; or

- b. Another form of fall protection is utilized.

8. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

9. Unless required otherwise by the manufacturer's specifications, all perpendicular slide guard members shall:

- a. Be number two (2) or better construction grade lumber;

- b. Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;

- c. Use lumber that is free from cracks or other visible defects; and

- d. Use other type of material that meets the same dimensions and is equivalent in strength, with the engineering specifications available at the site for review.

10. All perpendicular slide guard members shall be secured to the brackets and protected against cantilevering or failure due to material flex.

11. All slide guard systems shall be on the same walking/working surface as the employee being protected.

12. A continuous slide guard system below the walking or working area shall be installed along the eave no closer than six (6) inches from the eave and remain in place until the work is completed.

13. Additional continuous slide guards systems shall be installed below each walking or working area no more than eight (8) feet apart vertically.

14. The additional slide guards shall be installed using the following procedure:

- a. The employee, while standing on the slide guard below, shall secure the roof bracket, or jack, for the next slide guard;

- b. The employee shall install and secure the next perpendicular slide guard member;

- c. The employee shall then climb up to the new slide guard to continue work;

- d. This sequence shall be repeated as work proceeds up the roof;

- e. Once the work is complete and the slide guards are to be removed, the employee shall climb down to the next lower slide guard;

- f. The employee shall remove the perpendicular slide guard member from the slide guard above;

- g. The employee shall remove the roof brackets, or jacks, above;

- h. The employee shall repeat the sequence down the roof; and

- i. When all above slide guards have been removed, the slide guards at the eave shall be removed.

15. Manufactured roof brackets, or jacks, shall:

- a. Be a minimum of six (6) inch brackets;

- b. Be secured according to the manufacturer's specifications, limitations, and recommendations;

- c. Bear on a solid surface so that all anchors penetrate the roof's surface and the rafter or truss below, unless specified otherwise by the manufacturer's specifications;

- d. Not be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less; and

- e. Have the manufacturer's specifications available at the jobsite for review if the manufactured roof brackets, or jacks, are not utilized in accordance with the provisions established in this subparagraph.

16. Nonmanufactured, job, or site made slide guard systems shall comply with the provisions established in this subparagraph.

- a. Horizontal members shall be anchored with a minimum of

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two (2) sixteen (16) "penny", or 16d, common nails at least every four (4) feet so that all nails penetrate the roof's surface and the rafter or truss below.

b. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

c. Horizontal and perpendicular members shall be number two (2) or better construction grade lumber and have a minimum dimension of two (2) inches nominal by six (6) inches nominal.

d. Perpendicular members shall be anchored to the horizontal members with a minimum of one (1) sixteen (16) "penny", or 16d, common nail at least every two (2) feet.

e. The perpendicular member shall be provided with support bracing at least every six (6) feet.

f. More than one (1) person shall not occupy any given eight (8) feet of a job made slide guard system.

g. Engineering specifications shall be available at the site for review if the design or installation does not meet the minimum specifications established in this subparagraph. An engineer's seal shall not be required. Engineering specifications shall establish that nonmanufactured, job, or site made slide guard systems shall be equivalent to a system constructed in accordance with the provisions established in this subparagraph.

Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction", August 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at www.labor.ky.gov.

LARRY L. ROBERTS, Chairman

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CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 8, 2014)

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

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal ~~regulations~~**[regulation]** published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441 revised July 1, 2013;

(2) The amendments to 29 C.F.R. 1926.1400 published in the May 29, 2013 Federal Register, Volume 78, Number 103; and

(3) The amendments to 29 C.F.R. 1926.1400 and 1926.1410 published in the April 11, 2014 Federal Register, Volume 79, Number 70[29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152].

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level." ~~[As approved by the Kentucky Occupational Safety and Health Standards Board.]~~

LARRY L. ROBERTS, Chairman

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CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Financial Standards and Examination Division
(As Amended at ARRS, July 8, 2014)

806 KAR 38:100. Risk-based capital for health organizations.

RELATES TO: KRS 304.2-150, 304.2-250(3), 304.2-260, 304.2-270, 304.32-140, 304.38-070, 304.38A-080, 304.38A-110

STATUTORY AUTHORITY: KRS 304.32-140(1), 304.38-070, 304.38A-080, 304.38-150, 304.38A-110(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.38-150 authorizes the Commissioner of the Kentucky Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS Chapter 304.38. KRS 304.32-140(1), 304.38-070, 304.38A-080, and 304.38A-110(2) require the Commissioner of the Kentucky Department of Insurance to promulgate administrative regulations establishing requirements for risk-based capital[KRS 304.32-140(1) requires a corporation subject to the requirements of KRS 304, Subtitle 32 to comply with the

~~risk-based capital requirements as established in administrative regulations promulgated by the commissioner. KRS 304.38A-080 and 304.38A-110(2) require a limited health service organization and single service organization whose certificate of authority was converted to a limited health service organization to comply with the risk-based capital requirements for health organizations in administrative regulations promulgated by the commissioner. KRS 304.38-070 requires risk-based capital to be determined in accordance with the risk-based capital requirements established under KRS Chapter 304, Subtitle 38 and any administrative regulations promulgated pursuant to KRS Chapter 13A.~~ KRS 304.38-150 provides that the Commissioner[Executive Director] of Insurance may make reasonable administrative regulations necessary for the proper administration of KRS Chapter 30 Subtitle 38. This administrative regulation establishes requirements for[requires] the health maintenance organizations, limited health service corporations, and nonprofit health service corporations to comply with risk-based capital reporting requirements to aid in the department's[office's] financial monitoring[of health maintenance organizations].

Section 1. Definitions. ~~[As used in this administrative regulation, these terms shall have the following meanings:]~~ (1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner[executive director] in accordance with Section 2(5) of this administrative regulation.

(2) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by the commissioner[executive director] to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner[executive director] to the health organization that the commissioner[executive director] has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to respond ~~[, in a manner satisfactory to the commissioner]~~ [executive director] ~~[,]~~ to a corrective order, if[provided] the health organization has not challenged the corrective order under Section 7 of this administrative regulation ~~[,]~~; or

(e) If the health organization has challenged a corrective order under Section 7 of this administrative regulation and the commissioner[executive director] has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond ~~[, in a manner satisfactory to the commissioner]~~ [executive director] ~~[,]~~ to the corrective order subsequent to rejection or modification by the commissioner[executive director].

(3) "Commissioner" is defined by[is] KRS 304.1-050(1).

(4) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(b) Notification by the commissioner[executive director] to the health organization of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) Pursuant to Section 7 of this administrative regulation, if a health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner[executive director] to the health

organization that the commissioner[executive director] has, after a hearing, rejected the health organization's challenge.

(5)[(4)] "Corrective order" means an order issued by the commissioner[executive director] specifying corrective actions which the commissioner[executive director] has determined are required, under the provisions of this administrative regulation.

(6) "Department" is defined by[is] KRS 304.1-050(2).

(7)[(5)] "Domestic health organization" means a health organization domiciled in this state.

(8)[(6)] "Foreign health organization" means a health organization that is licensed to do business in this state under KRS Chapter 304 Subtitle 38, 38A or 32 but is not domiciled in this state.

(9)[(7)] "Health organization" means a health maintenance organization, limited health[single] service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under KRS Chapter 304 Subtitle 38, 38A, or 32, except for[. This definition does not include] an organization that is licensed as either a life and health insurer or a property and casualty insurer under KRS Chapter 304 Subtitle 24 or 3 and that is otherwise subject to either the life or property and casualty RBC requirements.

(10)[(8)] "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the health organization's total adjusted capital is less than its Mandatory Control Level RBC;

(b) Notification by the commissioner[executive director] to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) Pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner[executive director] to the health organization that the executive director has, after a hearing, rejected the health organization's challenge.

(11)[(9)] "NAIC" means the National Association of Insurance Commissioners.

(12) "RBC" means risk-based capital.

(13)[(10)] "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(14)[(11)] "RBC level" means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company Action Level RBC" means, with respect to any health organization, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number[product of .50 and the risk-based capital after covariance (RBCAC)] determined under the risk-based capital formula in accordance with the RBC instructions; and

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(15)[(12)] "RBC plan" means a comprehensive financial plan containing the elements specified in Section 3(2) of this administrative regulation. ~~[If the executive director rejects the RBC plan, and it is revised by the health organization, with or without the executive director's recommendation, the plan shall be called the "revised RBC plan."]~~

(16)[(13)] "RBC report" means the report required in Section 2 of this administrative regulation.

(17) "Regulatory action level event" means, with respect to a health organization, any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is

greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by the commissioner to a health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure ~~that is satisfactory to the commissioner~~ and has cured the failure within ten (10) days after the filing date;

(e) The failure of the health organization to submit an RBC plan to the commissioner within the time period set forth in Section 3(3) of this administrative regulation;

(f) Notification by the commissioner to the health organization that:

1. The RBC plan or revised RBC plan submitted by the health organization is ~~in the judgment of the commissioner~~ unsatisfactory; and

2. Notification constitutes a regulatory action level event with respect to the health organization, ~~if provided~~ the health organization has not challenged the determination under Section 7 of this administrative regulation;

~~(g)(3)~~ If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under this paragraph, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge;

~~(h)(g)~~ Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, ~~if provided~~ the health organization has not challenged the determination under Section 7 of this administrative regulation; or

~~(i)(h)~~ If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under this paragraph, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

(18)(14) "Revised RBC plan" means an RBC plan that:

(a) Was rejected by the commissioner ~~executive director~~; and

(b) Was revised by the health organization, with or without the commissioner's ~~executive director's~~ recommendation.

(19)(15) "Total adjusted capital" means the sum of:

(a) A health organization's statutory capital and surplus (i.e., net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240 or 304.32-090; and

(b) ~~Such~~ Other items, if any, as the RBC instructions may provide.

Section 2. RBC Reports. (1) A domestic health organization shall, on or prior to each March 1 (the "filing date"), prepare and submit to the commissioner ~~executive director~~ a report of its RBC levels as of the end of the calendar year just ended, in the 2013 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies "1999 NAIC Managed Care Organization Risk-Based Capital Report, including Overview and Instruction for Companies, 1999 HMO Annual Statement Version". In addition, a domestic health organization shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner ~~executive director~~ in any

state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(2) A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, ~~and may adjust for the covariance between,~~ determined in each case by applying the factors in the manner set forth in the RBC instructions: ~~and~~

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business and relevant risks as are set forth in the RBC instructions. ~~(e) An excess of capital (i.e., net worth) over the amount produced by the risk-based capital requirements contained in the administrative regulation and the formulas, schedules and instructions referenced in this administrative regulation is desirable in the business of health insurance. Accordingly, health organizations shall seek to maintain capital above the RBC levels required by this administrative regulation. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this administrative regulation.~~

(3) If a domestic health organization files an RBC report that in the judgment of the commissioner ~~executive director~~ is inaccurate, then the commissioner ~~executive director~~ shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report". ~~(4) A domestic health organization shall file an additional interim RBC report if the executive director deems an interim report necessary to accurately perform ongoing financial examination or financial analysis of the health organization.~~

~~(5) A domestic health organization may file an additional interim RBC report if:~~

~~(a) The domestic health organization has experienced a material change in its operations or finances so that the most recently filed RBC report materially misstates the true conditions of the domestic health organization; and~~

~~(b) The domestic health organization receives prior written approval of the executive director for the interim RBC report filing.~~

~~(6) An interim RBC report shall be prepared in compliance with subsection (1) of this section. The executive director shall designate the time period which the interim RBC shall cover.]~~

Section 3. Company Action Level Event. (1) ~~If in the event of~~ a company action level event occurs, the health organization shall prepare and submit to the commissioner ~~executive director~~ an RBC plan that shall:

(a) Identify the conditions that contribute to the company action level event;

(b) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(c) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the

health organization's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(2) The RBC plan shall be submitted

(a) Within forty-five (45) days of the company action level event; or

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation, within forty-five (45) days after notification to the health organization that the ~~commissioner~~~~[executive director]~~ has, after a hearing, rejected the health organization's challenge.

(3) Within sixty (60) days after the submission by a health organization of an RBC plan to the ~~commissioner~~~~[executive director]~~, the ~~commissioner~~~~[executive director]~~ shall notify the health organization whether the RBC plan shall be implemented or is, ~~in the judgment of the executive director,~~ unsatisfactory. If the ~~commissioner~~~~[executive director]~~ determines the RBC plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, ~~in the judgment of the commissioner~~~~[executive director]~~. Upon notification from the ~~commissioner~~~~[executive director]~~, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the ~~commissioner~~~~[executive director]~~, and shall submit the revised RBC plan to the ~~commissioner~~~~[executive director]~~:

(a) Within forty-five (45) days after the notification from the ~~commissioner~~~~[executive director]~~; or

(b) If the health organization challenges the notification from the ~~commissioner~~~~[executive director]~~ under Section 7 of this administrative regulation, within forty-five (45) days after a notification to the health organization that the ~~commissioner~~~~[executive director]~~ has, after a hearing, rejected the health organization's challenge.

(4) ~~If [in the event of a notification by]~~ the ~~commissioner~~~~[executive director]~~ ~~notifies~~~~[executive director]~~ ~~that~~ a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the ~~commissioner~~~~[executive director]~~ may ~~at the executive director's discretion,~~ subject to the health organization's right to a hearing under Section 7 of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(5) Every domestic health organization that files an RBC plan or revised RBC plan with the ~~commissioner~~~~[executive director]~~ shall file a copy of the RBC plan or revised RBC plan with the insurance ~~commissioner~~~~[executive director]~~ in any state in which the health organization is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 8(1) of this administrative regulation; and

(b) The insurance ~~commissioner~~~~[executive director]~~ of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

1. Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

2. The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 4. Regulatory Action Level Event. (1) "Regulatory action level event" means, with respect to a health organization, any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by the executive director to a health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation,

the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the executive director to the health organization that the executive director has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the executive director and has cured the failure within ten (10) days after the filing date;

(e) The failure of the health organization to submit an RBC plan to the executive director within the time period set forth in Section 3(3) of this administrative regulation;

(f) Notification by the executive director to the health organization that:

1. The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and

2. Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under Section 7 of this administrative regulation;

3. If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the executive director under paragraph (f) of this subsection, the notification by the executive director to the health organization that the executive director has, after a hearing, rejected the challenge;

(g) Notification by the executive director to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the executive director has so stated in the notification, provided the health organization has not challenged the determination under Section 7 of this administrative regulation; or

(h) If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the executive director under paragraph (h) of this subsection, the notification by the executive director to the health organization that the executive director has, after a hearing, rejected the challenge.

(2) ~~If [in the event of]~~ a regulatory action level event occurs, the ~~commissioner~~~~[executive director]~~ shall:

(a) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an~~[such]~~ examination or analysis~~[as the executive director deems necessary]~~ of the assets, liabilities, and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying corrective actions as the ~~commissioner~~~~[executive director]~~ shall determine are required ~~[(a "corrective order")]~~.

(2)~~[(3)]~~ In determining corrective actions, the ~~commissioner~~~~[executive director]~~ may take into account relevant factors~~[the executive director deems]~~~~[relevant]~~ with respect to the health organization, based upon the ~~commissioner's~~~~[executive director's]~~ examination or analysis of the assets, liabilities, and operations of the health organization, including the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation and the challenge is made in good faith~~[not frivolous in the judgment of the executive director]~~ within forty-five (45) days after the notification to the health organization that the ~~commissioner~~~~[executive director]~~ has, after a hearing, rejected the health organization's challenge; or

(c) If the health organization challenges a revised RBC plan pursuant to Section 7 of this administrative regulation and the challenge is made in good faith~~[not frivolous in the judgment of the executive director]~~, within forty-five (45) days after the

notification to the health organization that the ~~commissioner[executive director]~~ has, after a hearing, rejected the health organization's challenge.

(3)(4) The ~~commissioner[executive director]~~ may retain actuaries and investment experts and other consultants as may be necessary ~~[in the judgment of the commissioner]~~ executive director] to review the health organization's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations, ~~[(including contractual relationships)]~~ of the health organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants shall be borne by the affected health organization or ~~[such]~~ other party as directed by the ~~commissioner[executive director]~~.

Section 5. Authorized Control Level Event. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by the executive director to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the executive director to the health organization that the executive director has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to respond, in a manner satisfactory to the executive director, to a corrective order (provided the health organization has not challenged the corrective order under Section 7 of this administrative regulation); or

(e) If the health organization has challenged a corrective order under Section 7 of this administrative regulation and the executive director has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the executive director, to the corrective order subsequent to rejection or modification by the executive director.

(2) ~~[If in the event of]~~ an authorized control level event occurs with respect to a health organization, the ~~commissioner[executive director]~~ shall:

(1)(a) Take action as required under Section 4 of this administrative regulation regarding a health organization with respect to which an regulatory action level event has occurred; or

(2)(b) If the ~~commissioner determines~~ executive director] deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take action as necessary to cause the health organization to be placed under regulatory control under KRS Chapter 304 Subtitle 33. ~~[If in the event]~~ the ~~commissioner[executive director]~~ takes action, the authorized control level event shall be ~~deemed~~ sufficient grounds for the ~~commissioner[executive director]~~ to take action under KRS Chapter 304 Subtitle 33, and the ~~commissioner[executive director]~~ shall have the rights, powers, and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33. ~~[If in the event]~~ the ~~commissioner[executive director]~~ takes actions under this paragraph pursuant to an adjusted RBC report, the health organization shall be entitled to protections as are afforded to health organizations under the provisions of Section KRS 304.33-130 pertaining to summary proceedings.

Section 6. Mandatory Control Level Event. (1) ~~[If in the event of]~~ a mandatory control level event occurs, the ~~commissioner[executive director]~~ shall take action as necessary to place the health organization under regulatory control under KRS Chapter 304 Subtitle 33. ~~[In that event,]~~ The mandatory control level event shall be ~~deemed~~ sufficient grounds for the ~~commissioner[executive director]~~ to take action under KRS

Chapter 304 Subtitle 33, and the ~~commissioner[executive director]~~ shall have the rights, powers, and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33.

(2) If the ~~commissioner[executive director]~~ takes actions pursuant to an adjusted RBC report, the health organization shall be entitled to the protections of Section KRS 304.33-130 pertaining to summary proceedings.

(3) ~~The commissioner~~ ~~[Notwithstanding any of the foregoing, the executive director]~~ may forego action for up to ninety (90) days after the mandatory control level event if the ~~commissioner[executive director]~~ finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

Section 7. Hearings. Upon the occurrence of any of the following events the health organization shall have the right to a confidential ~~departmental~~ office] hearing, on a record, at which the health organization may challenge any determination or action by the ~~commissioner[executive director]~~. The health organization shall notify the ~~commissioner[executive director]~~ of its request for a hearing within five (5) days after the notification by the ~~commissioner[executive director]~~ of any of the following events:

(1) Notification to a health organization by the ~~commissioner[executive director]~~ of an adjusted RBC report;

(2) Notification to a health organization by the ~~commissioner[executive director]~~ that:

(a) The health organization's RBC plan or revised RBC plan is unsatisfactory; and

(b) Notification constitutes a regulatory action level event with respect to the health organization;

(3) Notification to a health organization by the ~~commissioner[executive director]~~ that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or

(4) Notification to a health organization by the ~~commissioner[executive director]~~ of a corrective order with respect to the health organization.

Section 8. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking. (1) ~~(a) If in the possession or the control of the Department of Insurance, the following shall be confidential:~~

~~1. RBC reports, to the extent that the information is not required to be set forth in a publicly available annual statement schedule; and~~

~~2. RBC plans, including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the commissioner pursuant to examination or analysis with respect to a domestic health organization or foreign health organization.~~

~~(b) The commissioner may use the documents, materials, or other information in paragraph (a) of this subsection, in accordance with KRS 304.2-150, 304.2-250(3), 304.2-260, and 304.2-270[All RBC reports][to the extent the information is not required to be set forth in a publicly available annual statement schedule][and RBC plans][including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the commissioner executive director][pursuant to examination or analysis][with respect to a domestic health organization or foreign health organization that are in the possession or control of the Department of Insurance shall be confidential by law and privileged, shall not be subject to KRS 61.870 et seq, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private action. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties]~~ filed with the executive

director constitute information that may be damaging to the health organization if made available to its competitors, and therefore shall be kept confidential by the executive director. This information shall not be made public, except by the executive director and then only for the purpose of enforcement actions taken by the executive director pursuant to this administrative regulation or any other provision of the insurance laws of this state].

~~(2) [Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.~~

~~(3)] In order to assist the performance of the commissioner's duties, the commissioner:~~

~~(a) May share documents, materials, or other information obtained under this administrative regulation, in accordance with KRS 304.2-150, 304.2-250(3), 304.2-260(5), and 304.2-270; including the confidential and privileged documents, materials or information subject to subsection (1) of this section with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information];~~

~~(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and~~

~~(c) May enter into agreements governing sharing and use of information consistent with this section.~~

~~(3)(a)[(4)] Except as otherwise required or authorized under the provisions of this administrative regulation, a health organization, agent, broker, or other person engaged in any manner in the insurance business shall not make an assertion, representation, or statement with regard to the RBC levels of any health organization, or any component derived in the calculation, by:~~

~~1.a. Making, publishing, disseminating, circulating, or placing before the public; or~~

~~b. Causing, directly or indirectly, to be made published, disseminated, circulated, or placed before the public; and~~

~~2. Using:~~

~~a. A newspaper, magazine, or other publication;~~

~~b. A notice, circular, pamphlet, letter, or poster;~~

~~c. A radio or television station;~~

~~d. An advertisement, announcement, or statement; or~~

~~e. Any other means which places the information before the public.~~

~~(b) A health organization may publish an announcement in a written publication:~~

~~1. If the sole purpose is to rebut:~~

~~a. A materially false statement with respect to the comparison of the health organization's total adjusted capital to its RBC levels; or~~

~~b. An inappropriate comparison of any other amount to the health organization's RBC levels;~~

~~2. If these materially false statements or inappropriate comparisons are published in a written publication; and~~

~~3. If the health organization is able to demonstrate to the commissioner, with substantial proof, the falsity or inappropriateness of the statement[the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a~~

~~notice, circular, pamphlet, letter or poster, or over a radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; however, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels][or any of them)]][or an inappropriate comparison of any other amount to the health organizations' RBC levels is published in any written publication and the health organization is able to demonstrate to the executive director with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement].~~

~~(4)[(5)](3)] The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner[executive director] in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner[executive director] for ratemaking, nor considered or introduced as evidence in any rate proceeding, nor used by the commissioner[executive director] to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.~~

Section 9. Supplemental Provisions; Rules; Exemption. (1) The provisions of this administrative regulation are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under the law, including KRS Chapter 304 Subtitles 32, 33, 37 or 38, 304.2-065 or 806 KAR 3:150.

(2) The commissioner[executive director] may exempt from the application of this administrative regulation a domestic health organization that:

(a) Writes direct business only in this state;

(b) Assumes no reinsurance in excess of five (5) percent of direct premium written; and

(c) Writes direct annual premiums for comprehensive medical business of \$2,000,000 or less or is a limited health[single] service organization that covers less than 2,000[2000] lives.

Section 10. Foreign Health Organizations. (1)(a) A foreign health organization shall, upon the written request of the commissioner[executive director], submit to the commissioner[executive director] an RBC report as of the end of the calendar year just ended the later of:

1. The date an RBC report would be required to be filed by a domestic health organization under this administrative regulation; or

2. Fifteen (15) days after the request is received by the foreign health organization.

(b) A foreign health organization shall, at the written request of the commissioner[executive director], promptly submit to the commissioner[executive director] a copy of any RBC plan that is filed with the insurance commissioner[executive director] of any other state.

~~(2)(a) The commissioner may require a foreign health organization to file an RBC plan if a company action level event, regulatory action level event, or authorized control level event occurs with respect to the foreign health organization:~~

~~1. As determined under the RBC statute applicable in the foreign health organization's state of domicile;~~

~~2. Under the provisions of this administrative regulation, if no RBC statute is in force in the state of domicile; or~~

~~3. If the insurance commissioner of the state of domicile fails to require the foreign health organization to file an RBC plan in the manner specified under the RBC statute of the~~

domicile state.

~~(b) If the commissioner chooses to require the filing specified in paragraph (a) of this subsection, the failure of the foreign health organization to file the RBC plan shall be grounds to order the organization to cease and desist from writing new insurance business in the state of Kentucky. In the event of a company action level event, regulatory action level event or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization, if no RBC statute is in force in that state, under the provisions of this administrative regulation, if the insurance commissioner, executive director, of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC statute, if no RBC statute is in force in that state, under Section 3 of this administrative regulation, the commissioner, executive director, may require the foreign health organization to file an RBC plan with the commissioner, executive director. In that event, the failure of the foreign health organization to file an RBC plan with the commissioner, executive director, shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.~~

(3) ~~If in the event of~~ a mandatory control level event occurs with respect to a foreign health organization, and if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization:

~~(a) If~~ The commissioner, executive director, may make application to the Franklin Circuit Court permitted under the KRS Chapter 304 Subtitle 33 with respect to the liquidation of property of foreign health organizations found in this state; if and

~~(b)~~ The occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 11. ~~Phase-In Provision. (1) For RBC reports required to be filed by health organizations with respect to 2000, the following requirements shall apply in lieu of the provisions of Sections 3, 4, 5 and 6 of this administrative regulation:~~

~~(a) In the event of a company action level event with respect to a domestic health organization, the executive director shall take no regulatory action under this administrative regulation.~~

~~(b) In the event of an regulatory action level event under Section 4(1)(a), (b) or (c) of this administrative regulation, the executive director shall take the actions required under Section 3 of this administrative regulation.~~

~~(c) In the event of an regulatory action level event under Section 4(1)(d), (e), (f), (g), (h) or (i) of this administrative regulation or an authorized control level event, the executive director shall take the actions required under Section 4 of this administrative regulation with respect to the health organization.~~

~~(d) In the event of a Mandatory Control Level Event with respect to a health organization, the executive director shall take the actions required under Section 5 of this administrative regulation with respect to the health organization.~~

(2) Notwithstanding Section 1(8)(d) of this administrative regulation, for RBC reports required to be filed by health organizations with respect to 2000, "Authorized Control Level RBC" shall equal forty (40) percent of the Risk Based Capital After Covariance (RBCAC) determined under the risk-based capital formula in accordance with the RBC instructions; and for the RBC reports required to be filed by health organizations with respect to 2001, "Authorized Control Level RBC" shall equal forty-five (45) percent of the Risk Based Capital After Covariance (RBCAC) determined under the risk-based capital formula in accordance with the RBC instructions. Thereafter, the definition in Section 1(8)(d) of this administrative regulation shall apply.

Section 12. Incorporation by Reference. (1) "2013 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies" [1999 NAIC Managed Care Organization Risk-Based Capital Report, including Overview and

Instructions for Companies, 1999 HMO Annual Statement Version", (11/1/99 Edition)], National Association of Insurance Commissioners, 9/6/2013, is incorporated by reference.

(2) This material ~~it~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department ~~Office~~ of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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 Community Based Services

Division of Family Support

(As Amended at ARRS, July 8, 2014)

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 established ~~defined~~ in Section 3 of this administrative regulation; and

(c) Who may represent the participant in a hearing, as established ~~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 or administrative regulation, ~~for 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 the appeal.

(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 may[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 may[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.~~[14:]~~ 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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, July 8, 2014)**

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:

(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 shall [may] provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the 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. Question or 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 may[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:
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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Commissioner's Office
(As Amended at ARRS, July 8, 2014)**

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(44)(43), 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. Part 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 will[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" means a 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(44)(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. [(4)] 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,
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502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Audits and Investigations (Amended After Comments)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020-218A.250[218A.130], 21 C.F.R. 1308.31-1308.32

STATUTORY AUTHORITY: KRS [194A.030, 194A.050, 211.090,] 218A.020[, 218A.250]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(3) provides that if a controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health and Family Services, the Cabinet for Health and Family Services may similarly control the substance under KRS Chapter 218A by administrative regulation. This administrative regulation exempts prescription products from the licensing, distribution, recordkeeping, and reporting provisions of KRS Chapter 218A if the products have received approval as an exempt prescription product pursuant to 21 C.F.R. 1308.32[from the provisions of KRS Chapter 218A that stimulant or depressant products have been exempted pursuant to federal regulation].

Section 1. Exempt Prescription Products. **(1) Except for subsection (2) of this section,** the Cabinet for Health and Family Services exempts prescription products from the licensing, distribution, recordkeeping, and reporting provisions of KRS 218A.150 – 218A.172, 218A.180, 218A.200, and 218A.202 if the products have received approval as exempt prescription products pursuant to 21 C.F.R. 1308.32.

(2) All products containing butalbital shall:

(a) Be reported to the Kentucky All-Schedule Prescription Electronic Reporting System in accordance with the requirements established in 902 KAR 55:110; and

(b) Not be exempt from the licensing, distribution, and recordkeeping provisions of KRS 218A.150 – 218A.172, 218A.180, and 218A.200[the following prescription products from the provisions of KRS 218A.150 – 218A.180 and 218A.200:

- (1) Acetaminophen 325mg/Butalbital 50 mg, tablet, NDC 00456-0674: butalbital 50 mg;
- (2) Acetaminophen 500mg/Butalbital 50 mg, tablet, NDC 00456-0671: butalbital 50 mg;
- (3) ALAGESIC Tablets, tablet, NDC 55726-0300: butalbital 50 mg;
- (4) Alkaloids of Belladonna and Phenobarbital, tablet, NDC 00377-0527: phenobarbital 16.20 mg;
- (5) Amaphen Capsules (reformulated), capsule, NDC 11311-0954: butalbital 50 mg;
- (6) Aminophylline and Phenobarbital, enteric-coated tablet, NDC 00115-2156: phenobarbital 15 mg;
- (7) Aminophylline and Phenobarbital Tablets, tablet, NDC 00115-2154: phenobarbital 15 mg;
- (8) Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg;
- (9) Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50 mg;
- (10) Anoquan Modified Formula, capsule, NDC 00166-0881: butalbital 50 mg;
- (11) Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 3.24 mg/ml;
- (12) Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg;
- (13) Antispas, tablet, NDC 00377-0622: phenobarbital 16.20 mg;
- (14) Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg;
- (15) Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg;

- (16) Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg;
- (17) Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml;
- (18) Antispasmodic Elixir, elixir, NDC 00364-7002: phenobarbital 3.20 mg/ml;
- (19) Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml;
- (20) Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg;
- (21) Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg;
- (22) Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg;
- (23) Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg;
- (24) Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3 mg/ml;
- (25) Antrocol Tablets, tablet, NDC 00095-0040: phenobarbital 16 mg;
- (26) Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg;
- (27) Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg;
- (28) Axotal, tablet, NDC 00013-1301: butalbital 50 mg;
- (29) Azpan, tablet, NDC 00172-3747: phenobarbital 8 mg;
- (30) B-A-C Tablets, tablet, NDC 00259-1256: butalbital 50 mg;
- (31) Bancap, capsule, NDC 00456-0546: butalbital 50 mg;
- (32) Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg;
- (33) Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg;
- (34) Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml;
- (35) Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg;
- (36) Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg;
- (37) Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;
- (38) Bel-phen-ergot-s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;
- (39) Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg;
- (40) Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- (41) Belladenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- (42) Belladenal-S, sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- (43) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- (44) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- (45) Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- (46) Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- (47) Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- (48) Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- (49) Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- (50) Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- (51) Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- (52) Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- (53) Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-

- 1624: phenobarbital 2.92 mg/ml;
 (54) Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
 (55) Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
 (56) Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
 (57) Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg;
 (58) Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
 (59) Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
 (60) Butacet Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
 (61) Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
 (62) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
 (63) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
 (64) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
 (65) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
 (66) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
 (67) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg;
 (68) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
 (69) Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
 (70) Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
 (71) Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
 (72) Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
 (73) Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
 (74) Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
 (75) Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
 (76) Butibel Elixir, elixir, NDC 00037-0044: butabarbital sodium 3 mg/ml;
 (77) Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
 (78) Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
 (79) Cafergot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
 (80) Cafergot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
 (81) C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
 (82) Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg;
 (83) Charspast, tablet, NDC 00377-0500: phenobarbital 16.20 mg;
 (84) Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg;
 (85) Chlordiazepoxide HCl 5 mg and Clidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazepoxide HCl 5 mg;
 (86) Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg;
 (87) Chlordiazepoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide HCl 5 mg;
 (88) Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg;
 (89) Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazepoxide HCl 5 mg;
 (90) Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCl 5 mg;
 (91) Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg;
 (92) Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg;
 (93) CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
 (94) Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
 (95) Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
 (96) Dilantin with Phenobarbital 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
 (97) Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
 (98) Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
 (99) Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
 (100) Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
 (101) Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;
 (102) Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml;
 (103) Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
 (104) Donnatal No 2, tablet, NDC 00031-4264: phenobarbital 32.40 mg;
 (105) Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg;
 (106) Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
 (107) Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
 (108) E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg;
 (109) Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
 (110) Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
 (111) Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
 (112) EQUI-CET Tablets, tablet, NDC 57779-0111: butalbital 50 mg;
 (113) Ergocaff-PB Tablets, tablet, NDC 00536-3801: pentobarbital sodium 30 mg;
 (114) Esgic Capsules, capsule, NDC 00456-0631: butalbital 50 mg;
 (115) ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg;
 (116) Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
 (117) Espasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg;
 (118) Ezol, capsule, NDC 45985-0578: butalbital 50 mg;
 (119) Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg;
 (120) Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
 (121) FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg;
 (122) Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
 (123) G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
 (124) G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
 (125) Gustase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg;
 (126) Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
 (127) Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg;
 (128) Hyosophen Capsules, capsule, NDC 00536-3926: phenobarbital 16 mg;
 (129) Hyosophen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg;
 (130) Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg;
 (131) Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;

- (132) IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg;
- (133) ISOCET Tablets, tablet, NDC 00536-3951: butalbital 50 mg;
- (134) Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml;
- (135) Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml;
- (136) Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg;
- (137) Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
- (138) Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
- (139) Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml;
- (140) Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
- (141) Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
- (142) Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
- (143) Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
- (144) Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
- (145) Librax, capsule, NDC 00140-0007: chlordiazepoxide HCl 5 mg;
- (146) Lufyllin-EPG Elixir, elixir, NDC 00037-0565: phenobarbital 1.60 mg/ml;
- (147) Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg;
- (148) Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
- (149) Margesic Capsules, capsule, NDC 00682-0804: butalbital 50 mg;
- (150) Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg;
- (151) Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg;
- (152) Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg;
- (153) Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg;
- (154) Micomp-PB Tablets, tablet, NDC 55053-0525: pentobarbital sodium 30 mg;
- (155) Milprem-200, tablet, NDC 00037-5501: meprobamate 200 mg;
- (156) Milprem-400, tablet, NDC 00037-5401: meprobamate 400 mg;
- (157) Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
- (158) Mudrane GG Elixir, elixir, NDC 00095-0053: phenobarbital 0.50 mg/ml;
- (159) Mudrane GG Tablets, tablet, NDC 00095-0051: phenobarbital 8 mg;
- (160) Pacaps Capsules, capsule, NDC 10892-0116: butalbital 50 mg;
- (161) Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
- (162) Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
- (163) Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
- (164) PB Phe Bell, tablet, NDC 12908-7006: phenobarbital 16.20 mg;
- (165) Phedral C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg;
- (166) Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg;
- (167) Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
- (168) Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
- (169) Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
- (170) Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
- (171) PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
- (172) PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
- (173) Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
- (174) Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
- (175) Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;
- (176) Quadrial Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
- (177) Quadrial Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
- (178) Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
- (179) Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
- (180) Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg;
- (181) Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
- (182) Rexatal Tablets, tablet, NDC 00478-5477: phenobarbital 16.52 mg;
- (183) Rogesic Capsules, capsule, NDC 31190-0008: butalbital 50 mg;
- (184) Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
- (185) Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
- (186) Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
- (187) Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
- (188) Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
- (189) Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;
- (190) Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
- (191) Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
- (192) Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
- (193) Spasmolin, tablet, NDC 00115-4652: phenobarbital 15 mg;
- (194) Spastemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
- (195) Spastemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
- (196) Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
- (197) Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
- (198) Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
- (199) Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
- (200) Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
- (201) Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
- (202) Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
- (203) T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
- (204) T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg;
- (205) Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
- (206) Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
- (207) Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
- (208) Theophylline Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;

- (209) Triad, tablet, NDC 00785-2306: butalbital 50 mg;
 (210) Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;
 (211) Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
 (212) Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
 (213) Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
 (214) Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
 (215) Wescophen-S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
 (216) Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg;
 (217) Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8-10 mg; and
 (218) Zebutal, capsule, NDC 59630-0170: butalbital 50].

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 9, 2014 at 4 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Myneer, Stephanie Hold, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation exempts prescription products from the licensing, distribution, and recordkeeping provisions of KRS Chapter 218A if the products have been exempted by the Drug Enforcement Administration (DEA) from the application of certain provisions of the federal Controlled Substances Act pursuant to 21 C.F.R. 1308.32.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to exempt certain prescription products from the licensing, distribution, and recordkeeping provisions of KRS Chapter 218A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 by establishing Kentucky's exempt prescription products.

(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 Kentucky's exempt prescription products.

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

(a) How the amendment will change this existing administrative regulation: This amended after comments regulation deletes the obsolete list of exempt prescription products in Kentucky and adds language to clarify that prescription products which are exempt from the licensing, distribution, recordkeeping, and reporting provisions of KRS Chapter 218A shall be the same products that have received approval from the DEA for exemption from the application of certain provisions of the federal Controlled Substances Act pursuant to 21 C.F.R. 1308.32. Further, in response to concerns raised by the Kentucky Board of Pharmacy regarding butalbital, the amended after comments regulation clarifies that all products containing butalbital shall be reported to the Kentucky All Schedule Prescription Electronic Reporting (KASPER) System and not be exempt from the provisions of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation is necessary to ensure consistency between state and federal regulations which exempt certain prescription products from the licensing, distribution, recordkeeping, and reporting provisions of the state

and federal Controlled Substances Acts.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation conforms to the content of the authorizing statutes by ensuring consistency between state and federal regulations related to exempt prescription products.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments regulation assists in the effective administration of the statutes by ensuring consistency between this administrative regulation and 21 C.F.R. 1308.32.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding exempt prescription products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment and amended after comments regulation, Kentucky's pharmacists will use the DEA's most current Exempt Prescription Products List to ensure compliance with both this administrative regulation and federal regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any pharmacies for compliance with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making Kentucky's exempt prescription products list consistent with the DEA's exempt prescription products list, this amendment reduces confusion for pharmacists who rely on state and federal regulations for such information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional 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 fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding exempt prescription products.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, 21 C.F.R. 1308.31-1308.32

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

21 C.F.R. 1308.31-1308.32

2. State compliance standards. KRS 218A.020(3)

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.31 provides an application procedure whereby any person may apply for exemption for nonnarcotic prescription products which meet certain criteria. 21 C.F.R. 1308.31(a) further states that any person seeking to have any compound, mixture, or preparation containing any nonnarcotic controlled substance listed in 21 C.F.R. 1308.12(e), or in 21 C.F.R. 1308.13(b) or (c), or in 21 C.F.R. 1308.14, or in 21 C.F.R. 1308.15, exempted from application of all or any part of the federal Controlled Substances Act may apply to the Administrator of DEA for such exemption. 21 C.F.R. 1308.32 provides for a list of "exempted prescription products", which are prescription drugs that contain certain nonnarcotic controlled substances yet are exempt from certain provisions of the federal Controlled Substances Act.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

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

RELATES TO: KRS 156.111, 160.345(2)(h), 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions. (1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, guidance counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements. (1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

(3) An applicant for any alternative certification teacher or administrator program shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 or 3 except completion of the corresponding educator preparation program and the required assessments.

Section 3. University Requirements for Alternative Certification Teacher Program. (1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation institution seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully complete any applicable assessments, including internship programs, within a period of three (3) years for those enrolled in an alternative certification teacher program.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant

to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship Program pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching. (1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be:

(a) 1. Until December 31, 2014, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form TC-TP; or

2. Beginning January 1, 2015, issued in accordance with a grade level and specialization as recommended by the educator preparation institution on Form CA-TP; and

(b) Valid for employment consistent with the area of certification being sought through the preparation program.

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.

Section 5. Issuance of a Temporary Provisional Certificate for Teaching. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP or Form CA-TP a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in

accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) 1. Until December 31, 2014, completion of Form TC-TP; or
2. Beginning January 1, 2015, completion of Form CA-TP.

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional certificate;

(b) A minimum of six (6) new semester hours or its equivalent from the approved preparation program;

(c) The required assessments as established in 16 KAR 6:010; and

(d) 1. Until December 31, 2014, completion of Form TC-TP; or
2. Beginning January 1, 2015, completion of Form CA-TP.

Section 7. Alternative Certification Teacher Program Completion Requirements. (1) If the candidate has successfully passed the required assessments as outlined in 16 KAR 6:010, and completed the required coursework, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area covered by the temporary provisional certificate and in accordance with 16 KAR 7:010.

(2) When the candidate is prepared to enroll in the Kentucky Teacher Internship Program, the recommending institution shall complete and sign page five (5) of the TC-TP or page four (4) of the CA-TP form and deliver it to the employing school district for submission to the Education Professional Standards Board.

(3) Upon completion of all program requirements of the alternative certification teacher program, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010, the candidate may make application to the Education Professional Standards Board for the professional certificate on the form TC-1 or CA-1, which are[is] incorporated by reference in 16 KAR 2:010.

(4) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

(5) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate, in accordance with KRS 161.048(7), and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(6) If a candidate fails to complete all alternative certification program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, in accordance with KRS 161.048(7), the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment.

Section 8. University Requirements for an Alternative Certification Administrator Program. (1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval

established in 16 KAR 5:010, the educator preparation institution seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation institution mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate. (1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.

(4) The employing school district shall submit with Form TC-TP

or Form CA-TP a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(5) Beginning January 1, 2015, a candidate who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 11. Requirements for renewal of the temporary provisional certificate for an administrator. (1) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the temporary provisional certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) 1. Until December 31, 2014, completion of Form TC-TP; or 2. Beginning January 1, 2015, completion of Form CA-TP.

Section 12. Alternative Certification Administrator Program Completion Requirements. (1)(a) If the alternative certification administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6:030, and completed the required coursework, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7:020.

(b) When a principal candidate is ready to enroll in the Kentucky Principal Internship Program, the recommending institution shall complete page five (5) of the TC-TP form or Form CA-TP and deliver the form to the employing school district for submission to the Education Professional Standards Board.

(2)(a) An alternative certification administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative certification program for principal, the candidate shall be eligible for a Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(3)(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(4) Upon completion of the alternative certification administrator program, the assessments, and the internship or Superintendents Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 or CA-1 form.

(5) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional

Standards Board shall issue a professional certificate.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification", Form TC-TP, May 2007;

(b) "Application for Temporary Provisional Certification", Form CA-TP, June 2014;

(c) "Teacher Internship Statement of Eligibility-Confirmation of Employment as a Teacher", November 2004; and

(d)[(e)] "Principal Internship Statement of Eligibility-Confirmation of Employment as a Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

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

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: June 23, 2014

FILED WITH LRC: July 14, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, August 29, 2014 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to individuals seeking certification through a university-based alternative certification program of the requirements for certification and program completion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the steps necessary to achieve certification through a university-based alternative certification program.

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

(a) How the amendment will change this existing administrative regulation: This amendment transitions applicants for alternative certification from using the form TC-TP to form CA-TP. The CA-TP is an updated and modernized application form which also contains new character and fitness questions to ensure the applicants do not have any background issues that might make them unsuitable to work with students. Additionally, the new amendment adopts a requirement that first time applicants for certification submit the criminal background check required for school employment with their application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the current application process is modernized and collects only useful information on the applicant's background.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.048(1)(d) and (7) require the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board is collecting all the necessary information to make an informed decision of each candidate's fitness for the classroom and qualifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, thirty (30) educator preparation programs, and educators seeking alternative certification through a university based alternative certification program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will have a clearer form to complete and an assurance that their candidates have been reviewed by the Education Professional Standards Board. The educator preparation programs will have a clearer form to complete. Educators will have a less vague character and fitness questionnaire to complete and may need to provide some additional background information. First time applicants will need to provide the criminal background check obtained at employment to the EPSB for review.

(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 costs to any party since the background checks are required at employment and in order to receive a temporary provisional certificate the applicant must have an offer of employment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and school districts will be positively affected by the clarifications to the regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? Yes, individuals who do not

have current certification will be required to submit a criminal background check; otherwise, tiering will not apply since all candidates are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities, and the 173 public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.048

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program, but sets the requirements for university-based alternative certification programs.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

201 KAR 2:030. License Transfer.

RELATES TO: KRS 315.191(1)(c), (d), 315.210

STATUTORY AUTHORITY: KRS 218A.205(7), 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 requires the board to establish conditions for licensure by reciprocity. KRS 218A.205(7) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(3).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure at the time the license in the other jurisdiction was

granted;

(2) Applicant ~~holds[has held]~~ in good standing, an active license to practice pharmacy~~[during the entire year preceding the time of filing an application];~~

(3) Applicant has:

(a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and

(b) Received an NABP Official Application for Transfer of Pharmacist License;

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date and place of birth, and current age;

(4) Social Security number;

(5) Citizenship;

(6) Gender;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received;

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses obtained by:

(a) Score transfer; and

(b) Licensure transfer;

(13) Practice and employment, including nonpharmacist employment, from initial licensure to the date of filing the application; and

(14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, or disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

(1) Is an active member of the NABP; and

(2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(2), (20).

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License", 3/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, President

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday August 28, 2014 at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on Tuesday, September 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the board procedure for a pharmacist to reciprocate their pharmacist license to Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for allowing a pharmacist licensed in another state to reciprocate to Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding pharmacists reciprocating to Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for pharmacists to reciprocate his/her pharmacist license to Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow a pharmacist to reciprocate to Kentucky without having to wait one year from licensure by another state board of pharmacy.

(b) The necessity of the amendment to this administrative regulation: Requires the board to change the procedure in which a pharmacist can reciprocate his/her pharmacist license to Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding a pharmacist reciprocating his/her pharmacist license to Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will require the board to have procedures in place to allow a pharmacist to reciprocate to Kentucky from another state without having to wait one year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect

any hospital utilizing an automated pharmacy system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Pharmacists that reciprocate his/her pharmacist license from another state will not have to wait one year from the time he/she is licensed in another state.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will have a regulation that will provide them the ability to reciprocate to Kentucky immediately upon becoming licensed in another state.

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

(a) Initially: No new costs initially.

(b) On a continuing basis: No costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any pharmacist reciprocating to Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Pharmacy 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 315.191(1) (a) requires or 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? 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 Pharmacy (Amendment)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an apprentice program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. An applicant for registration as a pharmacist intern shall:

(1) File an Application for Registration as a Pharmacist Intern, Form I, with the board;

(2) Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification; and

(3) Submit proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. An applicant for examination for licensure as a pharmacist shall:

(1) Complete 1,500 hours of internship;

(2) Be awarded credit for internship for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) Be limited to internship credit:

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board; and

(b) Of twenty (20) hours per week during academic sessions in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;

(5) Be given credit for the following forms of internship:

(a)[-] Completion of an academic experience program;

(b)[-] Work performed in a pharmacy under the supervision of a preceptor;

(c)[-] Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours and the pharmacist intern shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or

(d) An internship performed outside of Kentucky if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) Not be awarded credit for an internship completed prior to

registration with the board.

Section 4. A pharmacist intern shall: (1) Be issued a Registration Identification Card;

(2) Carry the Registration Identification Card when on duty;~~and~~

(3) Show it upon request to a member of the board or its authorized agent; and

(4) Notify the board within thirty (30) days of any charge of:

(a) A felony;

(b) A violation of drug laws; or

(c) A violation of alcohol laws.

Section 5. The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

(1) Currently enrolled in a college or school of pharmacy approved by the board;

(2) A current applicant for licensure as a pharmacist in Kentucky; or

(3) Awaiting the results of an examination.

Section 6. The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) The intern is on a semester break; or

(2) Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate a temporary absence from enrollment and the absence is approved by the board.

Section 7. A person who is not registered as a pharmacist intern shall not:

(1) Hold himself out as a pharmacist intern; or

(2) Perform the duties of a pharmacist intern.

Section 8. (1) A preceptor shall be a pharmacist who:

(a) Has a~~Whose~~ license~~is~~ in good standing;

(b) Has been licensed by the board for at least one (1) year; and

(c) Has requested in writing to be designated as a preceptor.

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9. Credit for Non-Academic Experience Programs. (1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a Pharmacist Preceptor's Affidavit, Form II.

(2) On or before graduation from a college or school of pharmacy, a pharmacist intern shall submit an Internship Report, Form III.

Section 10. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

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

(a) "Application for Registration as a Pharmacist Intern", Form I, 11/2012;

(b) "Pharmacist Preceptor's Affidavit", Form II, 11/2012

(c) "Internship Report", Form III, 11/2012; and

(d) "Academic Experience Affidavit", Form IV, 11/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

CATHY HANNA, President

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative hearing shall be held on Thursday August 28, 2014 at 10.00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, close of business, September 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a pharmacist intern to notify the board within thirty (30) days of any charge of a felony, a violation of drug laws, or a violation of alcohol laws.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the requirement that a pharmacist intern notify the board within thirty (30) days of any charge of a felony, a violation of drug laws, or a violation of alcohol laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding pharmacist interns.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for pharmacist interns to notify the board within thirty (30) days of any charge against them for a felony, a violation of drug laws, or a violation of alcohol laws.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation details when a pharmacist intern must notify the board within thirty (30) days of a charge of a felony, a violation of drug laws, or a violation of alcohol laws.

(b) The necessity of the amendment to this administrative regulation: Requires a pharmacist intern to notify the board within thirty (30) days of any charge of a felony, a violation of drug laws, or a violation of alcohol laws.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the requirements of a pharmacist intern.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the board to require that pharmacist interns must report to the board within thirty (30) days of any charge of a felony, a violation of drugs laws,

or a violation of alcohol laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect 200 pharmacist interns that are registered with the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: The board will be notified by the pharmacist intern of any charge of a felony, a violation of drug laws, or a violation of alcohol laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will pay a fee of twenty-five (25) dollars for registration as a pharmacist intern and this expires in six (6) years. This fee is already established.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant shall report in thirty (30) days.

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

(a) Initially: No new costs initially.

(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: None

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

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

(9) TIERING: Is tiering applied? Tiering was applied as the regulation is applicable to any individual that is registered as a pharmacist intern in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Pharmacy 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 315.191(1) requires or 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? 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 Professional Counselors (Amendment)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Definitions. (1) "Face-to-face" means supervision that may include interactive, simultaneous video and audio media with a minimum of one direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room.

(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(3) "Practice of counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.

(4)[(3)] "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(5)[(4)] "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(6)[(5)] "Supervisor" means a member of a mental health or behavioral-services profession listed in Section 3(1) of this administrative regulation who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee in accordance with this administrative regulation.

Section 2. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 3. Supervision. (1) A supervisor shall be properly credentialed under Kentucky law as a member of one (1) of the following professions:

- (a) A licensed professional clinical counselor;
- (b) A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;
- (c) A licensed clinical social worker;
- (d) A licensed psychiatrist;
- (e) A nurse with a master's degree and psychiatric certification;

or

- (f) A licensed marriage and family therapist.

(2) The supervisor shall:

(a) Provide supervision to a person obtaining the experience required under KRS 335.525(1)(e);

(b) Not have:

- 1. An unresolved citation filed against the supervisor by the board that licenses or certifies that profession;
- 2. A suspended or probated license or certificate;
- 3. An order from the board under which the supervisor is licensed or certified prohibiting the supervisor from providing supervision; or

4. A previous or existing dual relationship or other personal relationship with a supervisee;

(c) Have been in the practice of his or her profession for two (2) years following licensure or certification in that profession; and

(d) Have completed the supervisor training required by subsection (3) of this section.

1. Except as provided in subparagraph 2 of this paragraph, experience acquired under the supervision of an individual who has not completed the supervisor training shall not count toward the requirements of KRS 335.525(1)(e).

2. A supervisor who is providing supervision on the effective date of this administrative regulation shall complete the training by October 31, 2010.

(3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training.

(a) The board-approved supervisor training shall cover Kentucky law governing the practice of professional counseling, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities such as logs, treatment, planning, recording, and proper documentation.

(b) Supervisor training shall be conducted by an instructor who is a Licensed Professional Clinical Counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12)~~six (6)~~ persons obtaining experience for certification or licensure at the same time.

(5) After January 1, 2016, a supervisor shall be licensed by the board as a licensed professional clinical counselor, except as established in this subsection.

(a) A supervision agreement that has been approved prior to January 1, 2016 that involves other licensees listed in 201 KAR 36:060, Section 3(1), may continue to be in effect until termination.

(b) An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in 201 KAR 36:060, Section 3(1), if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. The submittal for a hardship exemption shall be accompanied by the supervision agreement.

Section 4. Supervisory Agreement. (1) A supervisee shall enter into a written supervisory agreement with an approved supervisor. The supervisory agreement shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice 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 the type of:

1. Clients which will be seen;

2. Therapies and treatment modalities which will be used including the prospective length of treatment; and

3. Problems which will be treated;

(f) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per week;

2. Number of hours of individual supervision;

3. Methodology for transmission of case information; and

4. Number of hours of face-to-face supervision which meet the requirements of KRS 335.525(1)(e);

(g) A statement that supervision shall:

1. Occur a minimum of three (3) times per month and one (1) hour per meeting for a full time practice which consists of twenty-five (25) clock hours or greater per week; or

2. Occur a minimum of one (1) hour for every thirty (30) hours of client contact for a part time practice which consists of less than twenty-five (25) clock hours per week;

(h) The conditions or procedures for termination of the supervision;

(i) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 3 of this administrative regulation; and

(j) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervisory agreement, the supervisee shall submit a new supervisory agreement which sets forth the information required by subsection (1) of this section and which identifies the new supervisor of record.

(2) The supervisory agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 5. Experience Under Supervision. (1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may, in its discretion for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee.

Section 6. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis 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 professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the supervisory agreement required by Section 4 of this administrative regulation are not followed; or

- (b) The supervisory agreement is terminated for any reason.
- (3) If the terms of the supervisory agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.
- (4) The supervisor and supervisee shall sign and file with the board a Semi-Annual Report Form with their renewal application and by April 1st of each year.

Section 7. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) 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 4 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider while an appropriate board-approved supervisor is sought and a new 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)(a) Within ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances which have caused the supervisee to require temporary supervision.

(b) The supervisee 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.

(c) The written plan shall include:

1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An email address and a postal address for the temporary supervisor and the supervisee; and
4. A telephone number for the temporary supervisor.

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

(a) "LPCA Supervisory Agreement", March 2010; and

(b) "Counseling Associate Semi-Annual Report", October 2011.

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

MARTIN WESLEY, Chair

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 3, 2014 at 1 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014 at 2:00 pm at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in

being heard at this hearing shall notify this agency in writing by August 15, 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Diana Jarboe, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Jarboe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the supervision experience requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4,000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of experience that is acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes a definition for "individual supervision" and allows current supervisors who will not meet the new supervision requirement to continue supervising individuals until the contract is terminated.

(b) The necessity of the amendment to this administrative regulation: This amendment clearly defines what constitutes "individual supervision" and allows current supervisors to fulfill supervisory contracts without meeting the new requirements. The amendment prevents supervisees from being compelled to find new supervisors who meet the new requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This amendment establishes new requirements relating to who can serve as a supervisor.

(d) How the amendment will assist in the effective administration of the statutes: The regulation clearly defines what constitutes "individual supervision" which is required for licensure and sets the requirement that all supervisors will be required to be a Licensed Professional Clinical Counselor. The amendment will also allow the board discretion to approve an individual who is not a Licensed Professional Clinical Counselors as a supervisor under extenuating circumstances.

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

administrative regulation: There are approximately 700 assistants who require supervision pursuant to this regulation and currently 450 supervisors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require supervisors or supervisees to take any action to be in compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Supervisees will have the opportunity to have a supervisor who is not a Licensed Professional Counselor under extenuating circumstances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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 fee increase is 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 any fees or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all associates equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515

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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Education and examination requirements.

RELATES TO: KRS 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the educational and examination requirements for licensure.

Section 1. (1) Degree in counseling. To qualify as a degree in counseling under KRS 335.525(1)(c), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and which has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one course in a minimum of seven (7) of the nine (9) content areas established in KRS 335.525(1)(d);

2. Include a three (3) semester hour course, at the minimum, on Professional Orientation and Ethics that has as its concentration the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and which has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in Clinical Psychology, Social Work, Criminal Justice, or Special Education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d).

Section 2. Accreditation. (1) All coursework submitted for licensure shall be from a regionally accredited educational institution which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and

Western Association of Schools and Colleges.

(2) Effective January 1, 2017, applicants shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs.

Section 3. Examination. Applicants for licensure as a Licensed Professional Clinical Counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

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

(a) "Instructions for Completion of Application for a Licensed Professional Counselor Associate (LPCA)", November 2008;

(b) "Instructions for Completion of Application for Licensed Professional Counselor (LPCC)", November 2008;

(c) "Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity", October 2011; and

(d) "Application for Licensed Professional Counselor Associate", October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN WESLEY, Chair

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 3, 2014 at 1 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014 at 2:00 pm at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Diana Jarboe, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Jarboe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and examination requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational and examination requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. KRS 335.515(3) authorizes the board to promulgate administrative regulations

necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and examination that are acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation requires the counseling degree to be from a program accredited by the Council on Accreditation of Counseling and Related Programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it will ensure that counseling has been the core focus of the applicants' training and eliminate the need for the board to review various programs to determine the sufficiency of an individual applicant's education and degree.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. The profession recognizes The Council on Accreditation of Counseling and Related Programs as the entity most focused on the training of counseling, specifically.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate the need for the board to review specific coursework of applicants to determine its sufficiency. The board has previously determined the coursework in programs accredited by the Council on Accreditation of Counseling and Related Programs is sufficient, so the time to review applications will be significantly reduced.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken by applicants.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will be an automatic conclusion that the person applying for licensure will have acquired an education necessary to practice professional counseling in a competent manner to protect the public.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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 fee 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 does not establish any fees or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all applicants for licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3)

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

(a) 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, this is not a revenue generating regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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 Prosthetics, Orthotics and Pedorthics
(Amendment)

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter [on or after January 1, 2013].

RELATES TO: KRS 319B.010, 319B.030, 319B.110

STATUTORY AUTHORITY: KRS 319B.030(1), (2), 319B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1) requires the board to establish licensure categories and issue licenses for persons who wish to practice in this state as a licensed orthotist, licensed prosthetist, licensed orthotist-prosthetist, licensed pedorthist, or licensed orthotic fitter. This administrative regulation establishes the procedure by which those applicants shall apply for a license pursuant to KRS 319B.030.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist-Prosthetist. An applicant for licensure as an orthotist, prosthetist, or orthotist-prosthetist shall submit:

(1) A completed [“]Application for Licensure[“], Form BPOP1;

(2) A certified copy of the applicant's transcript from an accredited college or university showing a minimum of a baccalaureate degree awarded to the applicant;

(3) A certified copy of the applicant's education program in orthotics, prosthetics, or both from an educational program accredited by the Commission on Accreditation of Allied Health Education Program;

(4) Proof of completion of a residency meeting the standards established in KRS 319B.010(26) for the discipline for which the applicant has applied;

(5) Proof of the applicant's having obtained a passing score on the American Board of Certification (ABC) or Board of Certification/Accreditation (BOC) examinations[examination];

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Detailed work history, including scope of practice, covering the four (4) year period immediately prior to the date of application.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a pedorthist shall submit:

(1) A completed [“]Application for Licensure[“], Form BPOP1;

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE- approved pedorthic education program;

(4) Proof of passing the American Board of Certification (ABC) or Board of Certification/Accreditation examinations[exam];

(5) Proof of a minimum of 1,000 hours of pedorthic patient care, 500 hours shall be completed after the NCOPE- approved education program;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an orthotic fitter shall submit:

(1) A completed [“]Application for Licensure[“], Form BPOP1;

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE- approved orthotic fitter education program;

(4) Proof of passing the American Board of Certification (ABC) or Board of Certification/Accreditation (BOC) examinations[exam];

(5) Proof of a minimum of 1,000 hours of orthotic fitter patient care, 500 hours shall be completed after the NCOPE approved education program;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 4. Incorporation by Reference. (1) “Application for Licensure”, BPOP1, 07/2014[07/2012], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 11, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 1:00 PM, local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 the close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of: Establishes the requirements

to obtain a license as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for licensure.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation establishes the requirements for applicants for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for the process involved in obtaining licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will allow individuals opting to take the Board of Certification/Accreditation International (BOC) examination the opportunity to apply for licensure.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 150 persons will seek licensure within the next fiscal year. This regulation will also continue as new license new applicants who seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(a) Initially: The budget for the Board is \$9000 per year.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of \$9,000 per year.

(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 fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial fee regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish the fees only the

procedure for obtaining a license but there will be a fee to apply that is set in a separate regulation.

(9) Tiering: Is tiering applied? Yes. The regulation requires the same documentation to be provided with each type of license application but the licensure fee does vary between the types of license due to the experience required for each license.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET Board of Prosthetics, Orthotics and Pedorthics (Amendment)

201 KAR 44:110 Licensure by endorsement.

RELATES TO: KRS 319B.130

STATUTORY AUTHORITY: KRS 319B.030, 319B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.130 authorizes the board to issue a license to a prosthetist, orthotist, pedorthist, or orthotic fitter possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board shall issue a license by endorsement, without examination, to a prosthetist, orthotist, pedorthist, or orthotic fitter currently licensed by examination by the corresponding authority of another state upon:

(1) The board determining the other state's qualifications and standards are equal to or higher than those established in KRS 319B[Verification that the applicant meets all current requirements for licensure as established by KRS 319B.030(1) and 201 KAR 44:090];

(2) Payment of the fee for licensure as established by 201 KAR 44:010; and

(3) Verification of the applicant's license issued by another state that certifies that the license is:

(a) Active;

(b) In good standing; and

(c) Free of pending complaints.

Section 2. ~~Incorporation~~^{Incorporated} by Reference. (1) "Application for Licensure by Endorsement, BPOP2," 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 11, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 1:00 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 the close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of: Establishes procedures for granting licenses if a person holds a license from another state.

(a) What this administrative regulation does: Sets the procedures for obtaining a license if a person holds an active license from another state.

(b) The necessity of this administrative regulation: To establish how a person can obtain a license if they already hold an active license from another state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.130 authorizes the board to establish conditions for endorsement licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the potential licensee from another state how to obtain a Kentucky License if they are active and in good standing from their current state of practice.

(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 directs the board to determine that other state's qualifications for licensure are similar to Kentucky's standards instead of measuring the applicant against the Kentucky's standards directly.

(b) The necessity of the amendment to this administrative regulation: The amendment shifts the board's focus to other state's standards instead of reviewing an application under Kentucky's actual standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by clarifying the board's focus is determining whether the applicant's home state statutes are equal or higher to Kentucky and not to review the applicant as an initial Kentucky applicant.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will keep the board's review focused on whether the other state's standards are

equal or higher and allow staff to maintain a record of states approved for reciprocity or endorsement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of individuals affected by this amendment is unknown as the number of endorsement applicants cannot be predicted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes conditions for a person to obtain a license if they are active and in good standing from another state.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a license if the same for an endorsement license as it is a new applicant. This regulation will only reduce the amount of required documentation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow a potential licensee who are currently practicing in good standing in another state the opportunity to receive a license from Kentucky.

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

(a) Initially: There will be minimal cost to the board, as it will be the same cost as an initial applicant.

(b) On a continuing basis: There will be minimal cost to the board, as it will be the same cost as an initial applicant.

(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 solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase fees nor is any funding necessary to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish the fee it only sets forth the procedures for obtaining an endorsement license.

(9) TIERING: Is tiering applied? No, the regulation requires the same documentation to be provided by all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.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. None.

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

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

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

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

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

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

**GENERAL GOVERNMENT CABINET
Board of Prosthetics, Orthotics and Pedorthics
(Amendment)**

201 KAR 44:120. Post residency registration.

RELATES TO: KRS 319B.030(1)(c)

STATUTORY AUTHORITY: KRS 319B.030(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(c) authorizes the board to establish circumstances and conditions for individuals who have completed the required training and established circumstances by which an individual may continue to practice as a prosthetist or orthotist. This administrative regulation establishes the requirements for registration for post residency practice.

Section 1. Eligibility. (1) An orthotic or prosthetic resident, who has successfully completed an NCOPE residency in the appropriate field and prior to completing the American Board for Certification (ABC) or Board of Certification/Accreditation (BOC) examinations [examination], may work in the discipline in which he or she is exam eligible upon application to and approval by the board.

(2) An applicant shall submit to the board:

- (a) A completed Post Residency Registration form;
- (b) Documentation of residency completion;
- (c) Documentation of application for examination; and
- (d) A letter from a supervisory licensed practitioner that monitoring of the applicant will continue.

(3) The exemption shall expire fifteen (15) months from the date of completion of the NCOPE residency.

Section 2. Incorporation by Reference. (1) "Post Residency Registration", Form BPOP3, 07/2014[07/2012], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 11, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 1:00 PM local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 the close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort,

Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of: Establishes procedures and conditions for a person to continue practice without a license following their residency completion.

(a) What this administrative regulation does: Sets the procedures and conditions for a person to continue practice without a license following their residency completion.

(b) The necessity of this administrative regulation: To establish how a person can continue to work as an Orthotist or Prosthetist following their residency completion until the completion of the board exams.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.030 (1)(c) authorizes the board to establish conditions for practice following a residency program prior to completion of the board exams.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements to continue to practice and under what conditions of supervision.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes the examinations from the accrediting body of Board of Certification/Accreditation International (BOC).

(b) The necessity of the amendment to this administrative regulation: After seeking the advice of an expert, the Board concluded BOC examinations should be accepted in addition to the ABC examinations.

(c) How the amendment conforms to the content of the authorizing statutes: The statute states passing of examinations approved by the board are required for licensure. The Board has recently approved the BOC examinations.

(d) How the amendment will assist in the effective administration of the statutes: This is amendment does not affect 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: 1 to 10 individuals per year are expected to apply for a post residency registration to practice in Kentucky following the completion of their residency program prior to the successful completion of the exams.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes conditions for a person to continue to practice following their residency.

(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 for the person to register to continue to practice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow a potential licenses who are currently practicing as a resident and took the BOC examinations to continue to practice under established conditions and supervision until the successful completion of the board exam.

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

(a) Initially: There will be minimal cost to the board, as it will only register the potential licensure applicant prior to completing all areas to receive an active license.

(b) On a continuing basis: There will be minimal cost to the board, as it will only register the potential licensure applicant prior to completing all areas to receive an active license.

(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 solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase fees nor is any funding necessary to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish a fee it only sets forth the procedures for obtaining a post residency registration.

(9) TIERING: Is tiering applied? No, the regulation requires the same documentation to be provided by each applicant.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.030(1)(c).

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

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

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

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

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

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

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

DEPARTMENT OF AGRICULTURE Department of Agriculture

Office of State Veterinarian, Division of Animal Health (Amendment)

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

RELATES TO: KRS 150.720(2), 150.740, Chapter 246, 246.295(2), Chapter 251, 257.550, 257.990, 9 C.F.R. Part 55

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.030, 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources[KDFWR] to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and establishes[to establish] requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions. (1) "Adjacent herd" means a herd of cervids occupying premises that border a positive herd, including herds separated by roads or streams; or a herd of cervids occupying premises that were previously occupied by a positive herd within the past five (5) years.

(2) "Animal" means any farmed cervid.

(3) "Animal identification" means a device or means of animal identification approved for use under this administrative regulation by the State veterinarian.

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(6) "Certified" means the status achieved by a herd that has met the standards of the CWD HCP continuously for at least five (5) years.

(7) "Certified CWD cervid herd" means a herd of cervids that has achieved "Certified" status in the Kentucky HCP, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the Kentucky State veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid CWD Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs: the CWD Herd Certification Program (HCP) and the CWD Herd Monitoring Program (HMP).

(10) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(11) "CWD exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous five (5) years.

(12) "CWD exposed herd" means a herd in which a CWD positive animal has resided within five (5) years prior to that animal's diagnosis as CWD positive, as determined by an APHIS or state representative.

(13) "CWD Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "CWD Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "CWD positive animal" means an animal that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(16) "CWD positive herd" means a herd in which a CWD positive animal resided when it was diagnosed and which has not been released from quarantine.

(17) "CWD source herd" means a herd that is identified through testing, tracebacks, or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

(18) "CWD suspect animal" means an animal for which an APHIS or state representative has determined that unofficial CWD tests results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which official laboratory results are inconclusive or not yet conducted.

(19) "CWD suspect herd" means a herd for which unofficial CWD test results, laboratory evidence or clinical signs suggest a diagnosis of CWD as determined by an APHIS employee or state representative, but for which official laboratory results have been inconclusive or not yet conducted.

(20) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a CWD certified or monitored program.

(21) "Harvest" means to take or kill farmed cervids for meat and other products.

(22) "Herd" means a group of cervids that are:

(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single premises (lot, farm, or ranch); or

(b) under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(23) "Herd plan" means a written herd agreement or premises management agreement:

(a) Developed by APHIS in collaboration with the herd owner, state representatives, and other affected parties; and

(b) Which sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(24) "KDFWR" means the Kentucky KDFWR.

(25) "Licensed and accredited veterinarian" means a veterinarian:

(a) Approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and the State veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal animal disease control and eradication programs; and

(b) Who is licensed to practice in the Commonwealth of Kentucky under KRS Chapter 321.

(26) "Official animal identification" means a device or means of animal identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual animals.

(27) "Official CWD test" means any test for the diagnosis of CWD approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(28) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids or parts thereof to any location without specific written approval of the State veterinarian.

(29) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

Section 2. CCWDSI Surveillance Programs. All farmed cervid herds shall be enrolled in one (1) of the state CCWDSI programs, either the CWD Herd Certification Program (HCP) or the CWD Herd Monitoring Program (HMP) maintained by the Office of the State Veterinarian. The HCP and the HMP require annual renewal.

Section 3. HCP Requirements. Herds enrolled in this program shall meet the requirements provided in Sections 3 through 5 of this administrative regulation and the requirements in 9 C.F.R. Part 55, Subpart B. (1) Animal identification requirement.

(a) All animals twelve (12) months of age and older shall have at least two (2) forms of animal identification, one (1) of which shall be an official animal identification and one (1) form that is a visual (flop tag) type of identification, which shall be unique to that animal within the herd.

(b) All animals of any age shall have official animal identification before being moved from the premises for any purpose.

(2) The herd premises shall have a valid KDFWR permit and perimeter fencing that is approved by KDFWR pursuant to KRS 150.730 through 150.735.

(3) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(4) The owner shall report to the Office of State veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest or slaughter) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest or slaughter, a report shall be submitted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a

report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the death, disappearance, escape, slaughter, or killing of the animal.

(c) Animals that die or are killed by harvest or slaughter shall have the required tissue specimens collected for CWD testing except as exempted by 9 C.F.R. Part 55.24.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or state representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(5) The owner shall maintain and provide to the State Veterinarian or APHIS representative upon request the following herd records:

(a) Complete inventory of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid was shipped live other than to slaughter, the date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

2. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

3. If the cervid was shipped to slaughter, the date of movement, the cervid's age, sex, and state-federal official individual animal identification, and the name and address of the slaughter establishment;

4. If the cervid was killed by harvest, the date, the name and address of the hunter, and the disposition of the carcass; or

5. If the cervid escaped, the date of escape;

(d) A record of all individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd; and

(f) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(6) Animal inventory.

(a) To enroll a herd in the HCP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted by a representative of the office of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd inventory shall be conducted that reviews all records and includes observation of all[unrestrained] animals in an enclosed area including physical restraint as necessary to reconcile all visible identification devices with available records.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(d) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(7) Maintenance of separate herds by the same owner shall comply with 9 C.F.R. Part 55.23.

(8) The herd enrollment date is the date which is the latter of:

(a) The physical inventory being completed in accordance with subsection (6)(a) of this section; and

(b) The application being approved by the state veterinarian.
 (9) Surveillance procedures for the HCP. (a) HCP Certified Herds. Cervids twelve (12) months and older that die for any reason except slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(b) Non-certified HCP Herds. Cervids twelve (12) months of age or older that die for any reason including slaughter or harvest shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative.

(c) All animals in an enrolled herd shall have official identification before reaching the age of twelve (12) months.

Section 4. HCP Permit. (1) A HCP permit shall be required to participate in the program. A HCP permit is valid for one (1) calendar year from the date of enrollment. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of \$150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HCP as follows:

(a) Conduct the physical inventory required by Section 3(6) of this administrative regulation; and

(b) Provide any records of the animals to the state veterinarian.

(4) Herd status levels. (a) When a herd is first enrolled in the HCP, it shall be placed in first-year status, except that if the herd is comprised solely of animals obtained from herds already enrolled in the HCP, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the herd.

(b) If a herd continues to meet the requirements of the HCP, the herd status shall be upgraded by one (1) year on the program enrollment date.

(c) One (1) year from the date a herd is placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it is enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. Part 55.24.

(d) Herds currently enrolled in the CCDWSI program shall be aligned to the appropriate status level provided in 9 C.F.R. Part 55.24.

(e) A herd owner shall be issued a certificate of "Certified" status upon complying with the HCP Program, as defined in this administrative regulation.

(f) Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

(g) A herd's certification status shall be immediately revoked and a herd investigation shall be initiated, if CWD positive or exposed animals are found in the herd.

(5) New animals shall only be introduced into the herd from other herds enrolled in the Kentucky HCP or a state Chronic Wasting Disease Certification Program approved by the Kentucky State Veterinarian or the Federal CWD Certification Program.

(a) If animals are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(b) If animals are introduced from a herd not participating in a certification program, the receiving herd shall revert to first-year status in the certification program.

Section 5. Annual HCP permit renewal required. (1) To continue in the Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to

the expiration of the prior year's permit;

(b) Pay a \$150 renewal fee; and

(c) Make all animals and records available to the state veterinarian.

(2) Facilities and herds that have met the requirements in Sections 3 through 5 of this administrative regulation shall receive a renewal permit.

Section 6. CWD Herd Monitoring Program (HMP) Requirements. Herds enrolled in the HMP surveillance program shall meet the requirements in Sections 6 through 8 of this administrative regulation. HMP herds shall not be eligible for "certified" status. (1) All cervids entering a HMP facility shall originate from a CWD Certified Herd.

(2) A cervid shall not be permitted to leave the HMP facility alive.

(3) Animal identification requirement.

(a) All animals greater than twelve (12) months of age shall be identified with an official animal identification and a visual (flop tag) type of animal identification.

(b) Permit holders failing to meet identification requirements shall be subject to compliance plans and penalties as provided in Section 14 of this administrative regulation.

(4) The herd premises shall have a valid KDFWR permit pursuant to KRS 150.730 through 150.735.

(5) The herd veterinarian shall be notified within twenty-four (24) hours of observance of an animal with clinical signs suggestive of CWD.

(6) The owner shall report to the office of state veterinarian all animals that escape or disappear, and all deaths (including animals killed by harvest) of animals in the herd aged twelve (12) months or older.

(a) The reporting time frame shall be:

1. For animals that escape or disappear, a report shall be made within forty-eight (48) hours;

2. For animals taken by harvest, a report shall be submitted by the last day of each calendar month; and

3. For animals that die from illness or unknown reason, a report shall be submitted within seven (7) days.

(b) The report shall include all animal identification numbers and the estimated time and date of the disappearance, escape, or killing of the animal.

(c) Animals twelve (12) months of age or older that die or are killed by harvest shall have the required tissue specimens collected for CWD testing and submitted to an approved laboratory.

(d) In accordance with 9 C.F.R. 55.23, an APHIS or representative of the state veterinarian shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(7) The owner shall maintain and provide to the state veterinarian or APHIS representative upon request the following herd records:

(a) Census of animals including the official identification number and any other identification, and the age and sex of each animal;

(b) A record for each purchased or natural addition to the herd including:

1. The official identification number, species, age, and sex of the cervid;

2. The name and address of the person from whom the cervid was purchased;

3. The address of the herd from which the cervid was purchased;

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- or interstate movement;

5. Date the purchased addition entered the herd; and

6. Approximate date of birth if a natural addition;

(c) A record of each cervid leaving the herd including:

1. If the cervid died on the premises, the date of death, the apparent cause of death, the cervid's age, sex, and state-federal official individual animal identification, date and laboratory submitted for CWD testing, if required, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall

identify the carcass destination and recipient; and

2. If the cervid was killed by harvest, the date, name, and address of the hunter, the disposition of the carcass, and CWD testing information;

(d) A record of all CWD individual animal tests conducted on cervids in the herd;

(e) Records received from the herd veterinarian related to veterinary services provided to the herd;

(f) If the animal escaped, the date of escape; and

(g) All individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal.

(8) All removals and deaths shall be reported monthly to the state veterinarian.

(9) All untagged animals that die or are killed shall be identified with an official identification device and shall be tested for CWD and shall be reported to the state veterinarian.

(10) Animal inventory.

(a) To enroll a herd in the HMP, the owner shall conduct a physical inventory of all animals to establish the baseline herd inventory. The physical inventory shall be conducted with a representative of the State Veterinarian and shall verify all animal identification and records.

(b) An annual herd census shall be conducted by the owner and a representative of the office of the state veterinarian that reviews all records and includes observation of unrestrained animals in an enclosed area.

(c) The state veterinarian or APHIS representative may request additional physical inventories to verify herd compliance with program standards.

(11) Cervids twelve (12) months and older in the following categories that die shall be made available for tissue sampling and testing in accordance with instructions from the APHIS or state representative:

1. All cervids that are not officially identified;

2. All cervids that die for any reason other than harvest; and

3. The first ten (10) cervids that are harvested within a calendar year.

(12) The owner shall be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

Section 7. HMP Permit. (1) A HMP permit shall be required to participate in the program. The applicant shall submit the following:

(a) A permit application contained in the CCWDSI Herd Certification Program and Herd Monitoring Program application packet;

(b) A written statement by a Kentucky licensed and accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

(c) A fee of \$150.

(2) The department shall grant or deny a permit within thirty (30) days after the department receives the completed application package with the required fee.

(3) After the permit is issued, the participant shall enroll his herd into the HMP as follows:

(a) Conduct the physical inventory required by Section 6(10) of this administrative regulation;

(b) Provide origin documentation on all animals in herd; and

(c) Provide identification numbers, sex, age, and species for all animals in herd.

Section 8. Annual HMP permit renewal required. (1) To continue in the HMP Program, persons shall:

(a) Submit a permit renewal application thirty (30) days prior to the expiration of the prior year's permit;

(b) Pay a \$150 renewal fee; and

(c) Make all animals and records available to the State Veterinarian.

(2) Facilities that have met the requirements in Sections 6 through 8 of this administrative regulation shall receive a renewal permit.

Section 9. Intrastate Movement Requirements. (1) All intrastate

movements of cervids, other than to a state- federal-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed and accredited veterinarian in accordance with 302 KAR 20:065.

(2) The intrastate movement certificate shall include the following:

(a) Consignor's name, address, and state veterinarian issued farmed cervid permit number;

(b) Consignee's name, address, and state veterinarian issued farmed cervid permit number;

(c) Official individual animal identification for each animal; and

(d) The movement permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.

Section 10. Requirements for Entry into Kentucky. (1) Only cervids from "Certified CWD Herds" shall enter Kentucky.

(2) All cervids on the CVI shall meet the requirements in 302 KAR 20:040, Section 13.

(3) The following statements shall be included on the CVI:

(a) "All cervids identified on this certificate originate from a Certified herd meeting requirements for certified CWD herd status as determined by the Kentucky State veterinarian."; and

(b) "No cases of CWD in cervids have been diagnosed within a twenty-five (25) mile radius of the consignor premises in the last five (5) years."[-]

Section 11. Surveillance Testing Procedures. (1) Official CWD tests and approved labs to conduct official CWD testing shall be in accordance with 9 C.F.R. Part 55.

(2) A diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(3) If required tissues from test eligible cervids are not submitted for laboratory diagnosis, the state veterinarian shall reevaluate the status of the herd.

Section 12. Investigation of Cervid CWD-positive Animals. (1) An epidemiological investigation in accordance with 9 C.F.R. Part 55 shall be conducted for all animals diagnosed at an approved laboratory as CWD positive or suspect.

(2) All positive herds and all source, exposed, and adjacent herds shall be investigated epidemiologically.

(3) All positive herds and premises and all source, exposed, and adjacent herds and premises shall be quarantined.

Section 13. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed as follows:

(1) A premises may be removed from quarantine after completion of the herd plan and five (5) years of compliance with all provisions of the 9 C.F.R. Part 55.

(2) An adjacent or exposed herd/premises may be removed from quarantine only after an epidemiological investigation and by order of the designated epidemiologist.

Section 14. Penalties. (1) Penalties for failure to comply with standards established in this administrative regulation for the CCWDSI HCP or HMP.

(a) The department may, pursuant to KRS Chapter 257, revoke or suspend a herd's permit for the HCP or the HMP if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment;

2. A person fails to comply with requirements in this administrative regulation on animal identification, animal inventory, herd records, CWD testing, or animal movement; or

3. A person or facility fails to remain in compliance with KDFWR statutes and administrative regulations.

(b) In accordance with KRS 257.990, a permit holder may be subject to a fine for violation of this administrative regulation.

(c) Any person who violates Section 5(1)(b) or Section 8(1)(b) of this administrative regulation by making an untimely payment of a renewal fee, shall be charged a penalty of ten (10) percent and

shall be required to pay this penalty in addition to the original renewal fee.

1. The original renewal fee and penalties shall be compounded by ten (10) percent monthly until paid in full; and

2. Any renewal fee and penalties remaining unpaid for three (3) successive months may result in a permit revocation.

(2) Penalties for failure to comply with Section 10 of this administrative regulation, Requirements for Entry into Kentucky.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction for violating Section 10 of this administrative regulation.

(b) Upon conviction of a second violation of Section 10 of this administrative regulation and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the KDFWR may seize captive cervids that have been imported into the Commonwealth contrary to this administrative regulation and KRS 150.740 and 257.550.

(4) In accordance with KRS 150.740(8), the KDFWR may seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary this administrative regulation and KRS 150.740 and 257.550.

Section 15. Incorporation by Reference. (1) "CCWDSI Herd Certification Program and Herd Monitoring Program application packet," 10/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Animal Health, 100 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: June 30, 2014

FILED WITH LRC: June 30, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014, at 10:00 a.m., at Office of State Veterinarian, 109 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and establish requirements for intrastate and interstate movement of farmed cervids.

(b) The necessity of this administrative regulation: Provides uniformity with USDA CWD rule as stated in 9 C.F.R. Part 55.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.720(1) and 246.295(1), 257.550 require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and

farm-raised cervids maintained for the production of meat and other products.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline standards of the CCWDSI 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: This administrative regulation will make a visual identification be unique within a herd, clarify that physical inventory is done at least every three years, and update the testing requirements. The amendments provide uniformity between USDA CWD rule as stated in 9 C.F.R. Part 55.

(b) The necessity of the amendment to this administrative regulation: The changes are necessary for uniformity between USDA CWD rule as stated in 9 C.F.R. Part 55, so that we may be an approved state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.720(1) and 246.295(1) require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify standards for the CCWDSI programs. With clear, easy to understand regulation the enforcement of these provisions will be made easier for the OSV.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: eighty-five (85) farmed cervid producers, Kentucky Department of Agriculture, and Department of Fish and Wildlife Resources.

(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 farmed cervid producers will need to conduct physical inventories of animals, and maintain herd records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$150 for farmed cervid producers yearly. Kentucky Department of Agriculture inspects producers bi-annually and maintains herd records which will allow for interstate movement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Farmed cervid producers will have enhanced markets intrastate and interstate. Kentucky Department of Agriculture will have improved records and documentation on each farmed cervid producer. Most importantly, we will be a USDA approved state.

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

(a) Initially: Kentucky Department of Agriculture will be spending more time with farmed cervid producers and will conduct an annual physical inventory upon entry of the program.

(b) On a continuing basis: No additional costs other than staff time and materials are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds and farmed cervid producer fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not alter the current fee structure.

(9) TIERING: Is tiering applied? No. All regulated entities have

the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 9 C.F.R. Part 55.
2. State compliance standards. KRS 150.720(1), 246.295(1), 257.030
3. Minimum or uniform standards contained in the federal mandate. 9 C.F.R. Part 55.
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 amendment will not impose any stricter requirements than what are minimally necessary for the federal program approval.
5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. The program is no more strict.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture and the Kentucky Department of Fish and Wildlife Resources.
 2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.550 and 9 C.F.R. Part 55
 3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will cause no revenue changes.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will cause no revenue changes.
 - (c) How much will it cost to administer this program for the first year? No changes will occur in administration costs.
 - (d) How much will it cost to administer this program for subsequent years? No changes will occur in administration costs.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENERGY AND ENVIRONMENTAL CABINET Department of Environmental Protection Division of Water (Amendment)

401 KAR 8:200. Microbiological monitoring.

RELATES TO: KRS 224.10-110, 40 C.F.R. 141.21, 141.52, 141.63[~~EO-2009-538~~]
STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.21, 42 U.S.C. 300f-300j-26[~~EO-2009-538~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use.[~~EO-2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation establishes a schedule and method for sampling drinking water to test for bacteriological contaminants,~~[and]~~ establishes maximum

contaminant levels for bacteria, ~~and establishes~~[~~—This administrative regulation also specifies~~] requirements if tests show maximum contaminant levels have been exceeded.[~~This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month.~~]

Section 1. A “public water system”, as defined by 40 C.F.R. 141.2, shall meet the requirements established in 40 C.F.R. 141.21, 141.52, and 141.63[~~except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation~~].

Section 2. Beginning January 1, 2016, a public water system shall comply with the requirements established in 40 C.F.R. 141.851 through 141.861[~~A semipublic water system shall take a minimum of two (2) total coliform bacteria samples each month the system is in operation~~].

Section 3. Population served shall be determined by the appropriate method established in this section. (1) A supplier of water serving an area defined by an official census count or population projection shall:

- (a) Use the most recent census count or serviceable population determined by the cabinet; and
- (b) Provide the figure and its source in its Monthly Operating Report established in 401 KAR 8:020, Section 2(7), by the tenth day of the month following the determination[~~official population projection~~].
- (2) [If] A supplier of water serving[~~serves~~] an area without available or applicable official figures for population of the area served shall:
 - (a) Use the serviceable population determined by the cabinet;
 - or
 - (b) Calculate[~~;~~] the population served according to the appropriate method established in this subsection.

1. A “community water system”, as defined by 40 C.F.R. 141.2, shall calculate population served by multiplying the number of service connections by 2.78.

2. A “non-transient non-community water public water system”, as defined by 40 C.F.R. 141.2, shall use the actual population served.

3. A “semipublic water system”, as defined by 401 KAR 8:010, shall use the actual population served.

4. A “transient non-community public water system”, as defined by 40 C.F.R. 141.2, shall use the greater of:

- a. The number of service connections multiplied by 2.78; or
- b. The actual population served[~~shall be considered to be the greater of:~~
 - (a) A factor of not less than 2.97 times the number of residential meters; or
 - (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 9, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2014 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 2, 2014. Send written notification of intent

to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes monitoring requirements, analytical techniques and maximum levels for microbiological contaminants in water used for public consumption. The proposed amendments clarify reporting requirements, establish a maximum contaminant level for E. Coli which triggers additional assessments, requires public water systems to identify sanitary problems and take corrective action, and establishes more accurate methodology in calculating "population served" based on the most recent census information.

(b) The necessity of this administrative regulation: This administrative regulation requires public water systems to monitor coliform levels and take corrective action should an exceedance occur to assure microbiological purity of drinking water which is essential to protect public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes limits on microbiological contaminants in drinking water and decreases the pathways by which pathogenic contaminants can enter drinking water systems which are essential to protect public health.

(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 substantive requirements of the existing regulations remain unchanged. This amendment adopts 40 C.F.R. 141.851 through 861 (the federal Revised Total Coliform Rule or RTCR) which establishes better sampling techniques, establishes a maximum contaminant level for E. Coli and triggers additional assessments, and requires public water systems to take corrective action, when sanitary problems are identified. The proposed amendments also clarify reporting requirements and increase flexibility and establish a more accurate method of determining "population served" based on the most recent census information or WRIS data. The amendments also strike a reference to an outdated Executive Order.

(b) The necessity of the amendment to this administrative regulation: Adoption of 40 C.F.R. 141.851 through 861 (the Revised Total Coliform Rule) is necessary for the Cabinet to maintain its primary authority to administer and enforce the Commonwealth's Safe Drinking Water program, pursuant to 40 C.F.R. 142, Subpart B.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. Adoption of 40 C.F.R. 141.851 through 861 will make the administrative regulation conform exactly to federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The adoption of the Revised Total Coliform Rule will allow the Cabinet to maintain its primary authority in administering the federal Safe Drinking Water Act consistent with the authorizing statutes, and provides consistency with federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to 457 public and fifty (50) semipublic water systems which are commonly owned by city governments or organized under county governments. Other districts may, in some cases, have a public water system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The substantive requirements of the existing regulations remain unchanged. Adoption of the Revised Total Coliform Rule (RTCR) will require public water systems to update sampling plans and perform assessments of, and corrections to, their drinking water systems should coliform exceedances occur. Seasonal systems will be required to perform and document start-up procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain largely unchanged. The Revised Total Coliform Rule formalizes assessment and correction practices that the majority of drinking water systems have been using.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will continue to provide drinking water that meets the microbiological requirements of the Safe Drinking Water Act. The assessments will provide the systems with information needed to correct any sanitary defects that could compromise microbiological quality. Additionally, reducing monitoring requirements for public water systems with a population of less than 1,000 will result in a potential cost savings for sixty-two (62) systems of approximately \$240/year.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Initially: The cabinet does not anticipate significant additional personnel time or funding to implement the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period.

(a) On a continuing basis: The cabinet does not anticipate significant additional personnel time or funding to implement the revised regulation. Any assessments performed by Cabinet personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the Safe Drinking Water Act.

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

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

(9) TIERING: Is tiering applied? Yes. The numbers of required samples for public water systems differs based on the size of the population served. Fewer samples are required for smaller, non-community public water systems than for large public water systems. Additionally, reduced monitoring (quarterly and annually) may be available for systems that use only groundwater as a source, serve a population of 1,000 or less, and meet certain additional criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 applies to public and semipublic water systems. Public water systems are commonly owned by city governments or organized under county governments. Semipublic water systems may be owned by individuals. Other districts may, in some cases, have a water system.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants. Adoption of 40 C.F.R. 141.851 through 861 (the Revised Total Coliform Rule or RTCR) is necessary for the Cabinet to maintain its primary authority to administer and enforce the Commonwealth's Safe Drinking Water program, pursuant to 40 C.F.R. 142, Subpart B.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet does not anticipate significant additional personnel time or funding to administer the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period. Public water systems with a population of less than 1,000 will have reduced monitoring requirements which will result in a potential cost savings for sixty-two (62) systems of approximately \$240/year.

(d) How much will it cost to administer this program for subsequent years? The cabinet does not anticipate significant additional personnel time or funding to administer the revised regulation. Any assessments performed by division personnel should be minimal. A five (5)-year trend (2009-2013) indicates no more than six (6) Level 2 assessments would be conducted by division personnel in that five (5)-year period. Public water systems with a population of less than 1,000 will have reduced monitoring requirements which will result in a potential cost savings for sixty-two (62) systems of approximately \$240/year.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26), 40 C.F.R. 141.21, 141.52, and 141.63

2. State compliance standards. KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, 141.63 and 141.851-861 establish monitoring requirements, analytical techniques, and

maximum contaminant levels for microbiological contaminants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? At the request of industry, this regulation establishes an earlier compliance date of January 1, 2015, rather than March 1, 2015. The amendment to this regulation does not impose stricter or additional requirements than the federal regulations. The regulation does require at least one (1) microbiological test each month for most systems. This is a reduction of one (1) test per month for sixty-two (62) public water systems which will save those systems approximately \$240 per year.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. At the request of industry, this regulation establishes an earlier compliance date of January 1, 2015, rather than March 1, 2015. KRS 24.10-110 requires the cabinet to regulate semipublic as well as public water systems. The previous regulation required a minimum of two (2) bacteriological samples per month. The amended regulation requires one (1) microbiological test each month and immediate corrective action in the event of an exceedance. This combination is both reasonable and offers better protection for public health.

**ENERGY AND ENVIRONMENTAL CABINET
Department of Environmental Protection
Division of Water
(Amendment)**

401 KAR 8:300. Lead and copper.

RELATES TO: 40 C.F.R. 141.42, 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300f-300j-26[~~EO-2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.43, 141.80-141.91, 42 U.S.C. 300f-300j-26[~~EO2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) require the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use.[~~EO-2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation limits[~~bans~~] lead in drinking water facilities and establishes[~~provides~~] standards for lead and copper in drinking water.

Section 1. A public water system shall meet the requirements for control of lead corrosivity and copper as established in:

- (1) 40 C.F.R. 141.42, 141.43, 141.82, and 141.91;~~[and]~~
- (2) 40 C.F.R. 141.80, 141.81, 141.83 through 141.90, and 141.154;~~and~~
- (3) 42 U.S.C. 300g-6.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 9, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2014 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the

proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes analytical methods, monitoring requirements, action levels, and lower lead levels for public water systems to control amounts of lead and copper in public drinking water. The proposed amendment incorporates the federal Reduction of Lead in Drinking Water Act of 2011 (42 U.S.C. §300g-6) which reduced allowable lead levels in plumbing materials used for drinking water distribution and became effective January 4, 2014.

(b) The necessity of this administrative regulation: This administrative regulation limits the amount of lead and copper in drinking water which is essential to protect public health. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The proposed amendment incorporates the federal limits placed on lead in plumbing materials used for drinking water distribution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation limits lead and copper amounts in drinking water which is essential to protect public health. The proposed amendment incorporates and conforms to federal limits placed on lead in plumbing materials used for drinking water distribution.

(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 references 42 U.S.C. §300g-6 (the Reduction of Lead in Drinking Water Act of 2011) which reduced allowable lead levels in plumbing materials used for drinking water distribution, and became effective January 4, 2014. The substantive requirements of the existing regulations remain unchanged.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The proposed amendment incorporates and conforms to the federal limits placed on lead in plumbing materials used for drinking water distribution.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation limits lead and copper amounts in drinking water which is essential to protect public health. The proposed amendment incorporates the federal limits on lead contained in plumbing materials for drinking water distribution which became effective January 4, 2014 and results in clear and consistent state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to 450 public water systems which are often owned by city

governments or organized under county governments. Other districts may, in some cases, have a public water system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The substantive requirements of the existing regulations remain unchanged. Effective January 4, 2014, federal law reduced the allowable amounts of lead in plumbing materials used for drinking water distribution, and prohibited the sale and installation of non-conforming drinking water plumbing materials. Public water systems will be required to use materials that meet the lower lead content plumbing standards when installing new, or making repairs to existing, drinking water distribution lines.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation have increased new plumbing construction and plumbing replacement costs for drinking water lines by approximately thirty (30) percent. Effective January 4, 2014, manufacturers and vendors were to replace all non-conforming products with those that meet the federal Reduction of Lead in Drinking Water Act requirements. These new products are the only ones that can now be used for drinking water distribution lines.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit from clear and consistent state and federal regulations. The proposed amendment is no more stringent than the federal requirements.

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

(a) Initially: Costs of implementation will remain the same. The requirements of this administrative regulation remain unchanged from regulations currently in place.

(b) On a continuing basis: Costs of implementation will remain the same. The requirements of this administrative regulation remain unchanged from regulations currently in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding to administer Kentucky's drinking water program is a combination of state general funds and federal funds to administer the Safe Drinking Water Act. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees 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 or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Yes. The proposed change to this administrative regulation applies only to public water systems that are subject to the Safe Drinking Water Act and Reduction of Lead in Water Act. However, non-conforming plumbing materials are no longer commercially available and can no longer be used in any system distributing or delivering water for human consumption, including those located in private homes. The Reduction of Lead in Water Act does not require that all existing lines be replaced with conforming plumbing materials, but requires that materials used for any new construction or repairs to existing drinking water lines meet the lower lead content requirements after January 1, 2014.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation applies to public water systems which are often owned by city governments or organized under county governments. Other districts may, in some cases, have a public water system.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. §300f through §300j-26) and 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring requirements and action levels for public water systems to follow for the control of lead and copper. The Reduction of Lead in Drinking Water Act of 2011 (42 U.S.C. § 300g-6) established limits on lead contained in drinking water plumbing materials. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water 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? This administrative regulation will not generate any revenue for local governments for the first year.

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking Water Act of 2011 and will not increase administration costs. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking Water Act of 2011 and will not increase administration costs.

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

Revenues (+/-): No change

Expenditures (+/-): Increase

Other Explanation: The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking Water Act of 2011 and will not increase administration costs. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program. The cost of some plumbing devices such as fixtures, valves, and meters have risen, however, effective January 4, 2014, only products that meet the federal Reduction of Lead in Drinking Water Act requirements are available in the marketplace.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. §300f through §300j-26), which includes the Reduction of Lead in Drinking Water Act (42 U.S.C. §300g-6), and 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91.

2. State compliance standards. KRS 224.10-100(28) and 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 140 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring

requirements and action levels for public water systems to follow for the control of lead and copper. 42 U.S.C. §300g-6 establishes the minimum requirements for plumbing materials used in drinking water distribution lines and systems. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A.

ENERGY AND ENVIRONMENTAL CABINET Department of Environmental Protection Division of Water (Amendment)

401 KAR 8:700. Bottled water.

RELATES TO: KRS 224.10-100, 224.10-110, 21 C.F.R. 129.35, 165.110

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110[, 21 C.F.R. 165.110]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 ~~requires~~[directs] the cabinet to enforce the administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. ~~This administrative regulation establishes~~[The purpose of this administrative regulation is to set out] provisions to assure the purity of water[.] placed in bottles[.] that will be resold as a food for human consumption or other consumer use. ~~U.S. EPA does not have a~~[The U.S. Environmental Protection Agency has no] federal regulation relating to bottled water. Certain provisions of this administrative regulation are more stringent than the FDA requirements. The cabinet requires that plans, reports, and monitoring results be submitted to the cabinet to ensure that compliance with all public health standards is achieved without more frequent, costly on-site inspections, and that systems monitor for chlorite more frequently to ensure that public health standards are met for any disinfectant residuals.

Section 1. Applicability. A bottled water system that bottles water within the Commonwealth shall comply with the provisions of 401 KAR Chapter 8 except:

(1)(a) Distribution system monitoring and compliance applicable to public water systems, including provisions for chlorine residual and disinfection by-products; and

(b) The public notification requirements of 401 KAR 8:070 and the reporting requirements of 401 KAR 8:075; and

(2) Water bottled outside the Commonwealth shall not be subject to this administrative regulation regardless of its source.

Section 2. Disinfection and Treatment. (1) Disinfection shall be by chlorination, ultraviolet light, ozonation, or chlorine dioxide.

(2) "Filtration", as defined by 40 C.F.R. 141.2, shall be used for all sources identified as "surface water" or "groundwater under the direct influence of surface water", as defined by 40 C.F.R. 141.2.

(3) A bottled water system that uses a surface water source may use treatment techniques that are different from other surface water users if equivalent treatment is provided.

(4) Water located in the line after bottling operations cease shall be flushed before bottling is resumed.

Section 3. Sampling, Monitoring, and Reporting. (1) Analysis shall be performed with a method established in 401 KAR Chapter 8 in a laboratory that shall be certified to conduct testing pursuant to 401 KAR 8:040.

(2) Monitoring results, including the Monthly Operating Report, shall be received by the cabinet no later than the tenth day of the month following the end of the reporting period.

(3) If no treatment or bottling of water occurred during the

reporting month, the bottled water system shall notify the cabinet in its Monthly Operating Report established in 401 KAR 8:020, Section 2(7), no later than the tenth day of the following month.

(4) Microbiological Sampling and Monitoring. A bottled water system shall conduct microbiological sampling and testing as established in 401 KAR 8:200.

(a) Each sample shall be taken after water disinfection and prior to the water being placed in a bottle, with no intervening stagnant storage; or

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant.

(5) Turbidity Sampling and Monitoring.

(a) A bottled water system shall conduct turbidity sampling once every four (4) hours the system is in operation, regardless of source. The system may substitute continuous monitoring for grab sampling as established in 401 KAR 8:150, Section 3(2), and may use the average turbidity value for each four (4) hour increment to determine compliance with turbidity performance criterion in paragraph (b) of this subsection.

(b) The turbidity level of the system's product water shall be less than or equal to three-tenths (0.3) nephelometric turbidity units (NTU) in not less than ninety-five (95) percent of the measurements taken each month, and shall never exceed one (1) NTU.

(6) Disinfectant Sampling and Monitoring. Monitoring for disinfectants shall occur after disinfection but prior to bottling, with no intervening stagnant storage.

(a) Chlorine dioxide. A bottled water system that uses chlorine dioxide shall monitor daily for chlorine dioxide.

1. The Maximum Residual Disinfection Level (MRDL) for chlorine dioxide shall not exceed 0.8 mg/L.

2. No two (2) consecutive daily samples shall exceed the MRDL for chlorine dioxide.

3. A bottled water system shall immediately take steps to lower the level of chlorine dioxide in finished water if the MRDL for chlorine dioxide is exceeded.

(b) Chlorite. A bottled water system that uses chlorine dioxide as a disinfectant shall monitor for chlorite annually. The Maximum Residual Disinfection Level (MRDL) for chlorite shall not exceed 1.0 mg/L.

(c) 1. Ozone. A bottled water system that uses ozone shall monitor:

a. Monthly for bromate; or

b. Annually for bromate if the system demonstrates that the average bromate concentration is less than 0.0025 mg/L calculated as a running annual average of monthly bromate samples.

2. The Maximum Contaminant Level (MCL) for bromate shall not exceed 0.010 mg/L.

(7) Chemical contaminants.

(a) A bottled water system shall monitor for chemical contaminants after treatment but before bottling, with no intervening stagnant storage.

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant.

(c) A bottled water system shall monitor for chemical contaminants:

1. Annually for inorganic and organic contaminants established in 401 KAR 8:250, including sodium;

2. Annually for secondary contaminants established in 401 KAR 8:600, except that a bottled water system may exceed maximum secondary contaminant levels for purposes of bottling mineral water or other water if:

a. Each consumer is informed by labeling as established in 902 KAR 45:050; and

b. The system obtains written cabinet approval after:

(i) Submitting secondary contaminant results before and after treatment; and

(ii) Providing justification for any exceedances;

3. Annually for lead and copper as established in 401 KAR 8:300;

4. Annually for total trihalomethanes and haloacetic acids established in 401 KAR 8:510; and

5. Every four (4) years for radiological contaminants

established in 401 KAR 8:550.

(d) Exception. A bottled water system that uses as its source a public water system as defined in 40 C.F.R. 141.2 and is subject to 401 KAR Chapter 8 may substitute the monitoring results of the public water system to satisfy the requirements of this subsection if the bottled water system submits a letter to the cabinet postmarked no later than January 30 of each year stating that it shall:

1. Use the annual results of their public water system source for that calendar year; and

2. Conduct monitoring established in this subsection that has not been conducted by the public water system source.

Section 4. Failure to Comply. (1) A bottled water system that exceeds a MCL or MRDL or otherwise fails to comply with this administrative regulation shall:

(a) Immediately cease operations;

(b) Notify the cabinet as established by 401 KAR 8:020, Section 2(7)(c), and the Cabinet for Health and Family Services, Department for Public Health; and

(c) Not resume operations without the written approval of the cabinet and the Cabinet for Health and Family Services, Department for Public Health.

(2) Enforcement of this administrative regulation shall be pursued for bottled water systems in the same manner as other public water systems. A bottled water system shall comply with the provisions of 401 KAR Chapter 8 with the following exceptions and provisions:

(1) Distribution systems and free chlorine.

(a) Administrative regulations pertaining to distribution systems of a public water system, including provisions for a free chlorine residual, shall not apply.

(b) The requirements of 401 KAR 8:160 and 401 KAR 8:510 shall not apply to a bottled water system, unless specifically included in subsections 5 and 6 of this section.

(2) Microbiological sampling. A bottled water system shall conduct microbiological sampling and testing at least once a week. Tests shall otherwise conform to 401 KAR 8:200.

(3) Samples location.

(a) Except as provided in paragraph (b) of this subsection, samples shall be taken after the disinfection of the water and prior to the water being placed in the bottle, with no intervening stagnant storage.

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant, if all other sampling procedures are met.

(c) Water located in the line after bottling operations cease shall be flushed before bottling is resumed.

(4) Turbidity sampling. For a bottled water system, regardless of source, turbidity sampling shall be conducted once every four (4) hours the system is in operation. The system may substitute continuous monitoring for grab sampling, with cabinet approval, and may use the turbidity value for every four (4) hours to determine compliance with the turbidity performance criterion. The turbidity level of the system's product water shall be less than or equal to three-tenths (0.3) nephelometric turbidity units NTU, in at least ninety-five (95) percent of the measurements taken each month, and shall never exceed one (1) NTU.

(5) Sampling, MCL, and MRDL for other contaminants.

(a) MCLs.

1. Except for lead and copper, the MCL for a contaminant for which testing is required in this subsection shall be as specified in 401 KAR 8:250, 401 KAR 8:400, 401 KAR 8:420, and 401 KAR 8:540.

2. Lead and copper. The MCL shall be:

a. Lead: 0.005 mg/L; and

b. Copper: one and zero-tenths (1.0) mg/L.

3. Within twenty-four (24) hours of receiving the test results, a bottled water system shall report to the cabinet violations of the MCL for chlorite and bromate and shall immediately stop bottling operations if violations exist.

(b) MRDLs.

1. Except as provided in subparagraph 2 of this paragraph, the MRDL for disinfectants shall be as specified in 401 KAR 8:510.

2. The MRDL for chlorine dioxide shall be as specified in 401 KAR 8:510, Section 3. No two (2) consecutive daily samples shall exceed the MRDL, monitored at the treatment plant after treatment.

3. A bottled water system shall report to the cabinet a violation of the MRDL for chlorine dioxide as soon as possible after learning of the exceedance, and shall immediately take steps to lower the level of chlorine dioxide in the system.

(c) Sampling.

1. A bottled water system shall monitor annually for the following:

a. (i) Contaminants specified in 401 KAR 8:250, 401 KAR 8:400, and 401 KAR 8:420, except as provided in subclause (ii) of this clause.

(ii) A bottled water system that uses as its source a public water system subject to 401 KAR Chapter 8 may, with written approval from the cabinet, substitute the monitoring results of the public water system for the monitoring required by clause a of this subparagraph. The bottled water system shall submit a letter by January 30 of each year, stating that it shall use the annual results of their purchasing system. The system shall include the PWSID of the purchasing system.

b. Lead;

c. Copper;

d. Total trihalomethanes, or TTHMs; and

e. Haloacetic acids, or HAAs;

2. A bottled water system shall monitor for radionuclides annually, according to the procedures in 401 KAR 8:550.

(6) Disinfection.

(a) Disinfection shall be by chlorination, ultraviolet light, ozonation, chlorine dioxide, or other method approved by the cabinet that provides equivalent treatment.

(b) A bottled water system that uses:

1. Chlorine dioxide shall monitor for chlorite daily in the treatment plant; or

2. a. Ozone shall monitor monthly for bromate in the treatment plant; or

b. Alternatively, a system that uses ozone shall monitor annually for bromate in the treatment plant, if the system demonstrates that the average bromide concentration is less than 0.05 mg/L, calculated as a running annual average of monthly bromide samples.

(7) Surface water treatment. Bottled water systems using surface water sources may, with cabinet approval, use treatment techniques that are different from other surface water users, if equivalent treatment is provided.

(8) Maximum contaminant level exception labeling. With approval of the cabinet, bottled water systems may exceed maximum contaminant levels for secondary contaminants for purposes of bottling "mineral water" or other water, if consumers are informed by proper labeling.

(9) Water bottled outside Commonwealth. Water bottled outside Kentucky shall not be subject to this administrative regulation, regardless of its source.

(10)(a) Analyses shall be performed in accordance with methods approved by 401 KAR Chapter 8 or 21 C.F.R. 165.110, in laboratories that are certified to conduct testing pursuant to 401 KAR 8:040.

(b) Monitoring results shall be received by the cabinet no later than the tenth day of the month following the end of the reporting period.

(11) The public notification requirements of 401 KAR 8:070 and the reporting requirements of 401 KAR 8:075 shall not apply to a bottled water system.

Section 2. Failure to Comply. A bottled water system that exceeds a maximum contaminant level or MCL, or a maximum residual disinfectant level or MRDL, or otherwise fails to comply with 401 KAR Chapter 8 shall:

(1) Immediately cease operations;

(2) Notify the cabinet and the Cabinet for Health and Family Services, Department for Public Health; and

(3) Not resume operation without the written approval of the

cabinet].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 9, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2014 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catafo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for public water systems that bottle water in Kentucky for sale to consumers.

(b) The necessity of this administrative regulation: KRS 224.10-100(30) and KRS 224.10-110 authorize the cabinet to promulgate administrative regulations for the purification of water for public and semipublic use. 21 C.F.R. 129 establishes FDA standards regarding the sources, testing, and processing of bottled water. Kentucky's definition of public water systems has always included systems in Kentucky which bottle water for purchase and consumption, and are subject to requirements of 40 C.F.R 141 and 401 KAR Chapter 8. This administrative regulation is necessary to establish requirements for public water systems that bottle water in Kentucky for public sale and consumption and to protect public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use and for the construction and operation of water treatment and distribution systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes disinfection, sampling and testing methods and places limits on contaminants in bottled water which are essential to protect public health.

(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 correct a reference to federal regulation, reorganize the regulation for clarity, and place specific limits on contaminants for bottled water systems.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary because many of the requirements located in 401 KAR Chapter 8 apply to all public water systems, but not specifically bottled water. Kentucky bottled water systems are considered public water systems subject to requirements of 40 C.F.R 141 and 401 KAR Chapter 8. The amendments will assure consumers that water bottled in Kentucky for purchase and consumption is properly tested and meets the maximum contaminant and residual disinfectant levels that are

applicable to bottled water systems.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use. The amendments clarify treatment, sampling, and testing methods and establish maximum contaminant levels for bottled water to ensure that it meets safety and health standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes disinfection, sampling and testing methods and places limits on contaminants in bottled water which are essential to protect public health.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to six (6) privately-owned public water systems currently bottling water in Kentucky, and any future bottled water systems.

(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 substantive requirements of the existing regulations remain unchanged. The amendments clarify disinfection, sampling and testing requirements, reporting requirements, and places limits on contaminant levels in bottled water.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain largely unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments provide clear, consistent, and definitive requirements specifically for bottled water systems which will make compliance easier than in the past.

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

(a) Initially: There are no additional initial costs to implement the regulation.

(b) On a continuing basis: There are no additional continuing costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the bottled water program is a combination of state general funds and federal funds provided to administer the Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees will not be necessary. The cabinet has received increased funding from the US Environmental Protection Agency (EPA) to implement new provisions of the Safe Drinking Water Act.

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

(9) TIERING: Is tiering applied? Yes. This administrative is applicable only to bottled water systems, not all public water systems. Bottled water systems may use treatment techniques other than those described in the regulation as long as equivalent treatment is provided. Bottled water Systems may substitute continuous monitoring for grab sampling under certain conditions. Systems may exceed secondary contaminant levels with cabinet approval provided consumers are informed by proper labeling and the system provides certain information to the cabinet. Bottled water systems that use public water systems as a source may substitute the monitoring results of the public water system to satisfy some 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? Six (6) public water systems 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 224.10-100(28), 224.10-110, 401 KAR 8:700, 21 C.F.R. 129 and 165.110

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

There is no Safe Water Drinking Act mandate for bottled water systems. 21 C.F.R. 129 and 165.110 establish federal Food and Drug Administration (FDA) standards regarding bottled water. Kentucky's definition of public water systems has always included systems in Kentucky which bottle water for purchase and consumption, and are subject to requirements of 40 C.F.R 141 and 401 KAR Chapter 8.

2. State compliance standards. KRS 224.10-100(28), 224.10-110, 401 KAR 8:700

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 129 establishes FDA standards regarding the sources, sampling, testing, treatment and processing of bottled water.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? This regulation requires turbidity sampling and testing consistent with the Safe Water Drinking Act, but otherwise reflects FDA requirements for bottled water. The cabinet requires that plans, reports, and monitoring results be submitted to the cabinet to ensure that compliance with all public health standards is achieved without more frequent, costly on-site inspections, and that bottled water systems monitor for contaminants to ensure that public health standards are met for any disinfectant residuals.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky bottled water systems are considered public water systems already subject to 40 C.F.R. 141 and 401 KAR 8:010. More frequent turbidity sampling and testing mirrors the Safe Water Drinking Act and assures a cleaner, safer product for consumers.

VOLUME 41, NUMBER 2 – AUGUST 1, 2014

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:060. Northpoint Training Center.

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 Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. 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 Northpoint Training Center.

Section 1. Incorporation by Reference. (1) Northpoint Training Center policies and procedures, July 14, 2014~~[September 13, 2011]~~, are incorporated by reference. Northpoint Training Center policies and procedures include:

- NTC 01-17-01 Relationships with Public, Media and Other Agencies (Amended 7/14/14~~[7/13/11]~~)
- NTC 02-07-02 Institutional Religious Center Fund (Amended 7/13/11)
- NTC 02-08-01 Inmate Canteen (Amended 9/13/11)
- NTC 02-12-01 Inmate Accounts (Amended 7/14/14~~[9/13/11]~~)
- NTC 06-01-01 Offender Information Services (Amended 7/14/14~~[9/13/11]~~)
- NTC 06-01-02 Offender Information Services - Release of Information (Amended 9/13/11)
- NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband (Amended 9/13/11)
- NTC 09-14-01 Inmate Death (Amended 7/13/11)
- NTC 09-16-01 Restricted Areas (Amended 7/14/14~~[01/07/08]~~)
- NTC 10-01-01 Special Management Unit (Amended 7/14/14~~[9/13/11]~~)
- NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets (Amended 7/13/11)
- NTC 11-05-02 Food Service Staff Health Standards~~[and Regulations for Food Service Employees]~~ (Amended 7/14/14~~[11/15/07]~~)
- NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens (Amended 7/13/11)
- NTC 12-02-02 Issuance of Personal Hygiene Products (Amended 7/13/11)
- NTC 12-06-01 Housekeeping Procedures (Amended 7/13/11)
- NTC 12-07-01 Grooming and Hair Care Standards (Amended 7/14/14~~[9/13/11]~~)
- NTC 13-01-01 Emergency Medical Care Plan (Amended 7/14/14~~[11/15/07]~~)
- ~~[NTC 13-01-02 Emergency and Specialized Health Services (Amended 7/13/11)]~~
- NTC 13-02-01 Provisions and Authority for Health Services (Amended 7/14/14~~[Added 9/13/11]~~)
- NTC 13-03-01 Sick Call and Pill Call (Amended 7/13/11)
- NTC 13-04-01 Utilization of Pharmaceutical Products (Amended 9/13/11)
- NTC 13-05-01 Dental Services (Amended 7/13/11)
- NTC 13-08-01 Medical and Dental Records (Amended 7/14/14~~[11/15/07]~~)
- NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
- NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 7/14/14~~[7/13/11]~~)
- NTC 13-12-01 Special Health Care Programs (Amended 7/13/11)
- NTC 13-13-01 Inmate Self-administration of Medication (Amended 7/13/11)
- NTC 13-19-01 Mental Health Care Program (Amended 7/14/14~~[7/13/11]~~)

- NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 7/13/11)
- NTC 13-20-02 Infectious Disease~~[Infection]~~ Control (Amended 7/14/14~~[9/13/11]~~)
- NTC 13-22-01 Informed Consent (Amended 7/13/11)
- NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
- NTC 14-01-01 Legal Services Program (Amended 7/14/14~~[7/13/11]~~)
- NTC 14-02-01 Inmate Grievance Procedure (Amended 5/12/06)
- NTC 14-03-02 Board of Claims (Amended 9/13/11)
- NTC 15-02-01 Due Process and Disciplinary Procedures (Amended 7/14/14~~[7/13/11]~~)
- NTC 15-02-02 Extra Duty Assignments
- NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 7/14/14~~[9/13/11]~~)
- NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended 7/14/14~~[9/13/11]~~)
- NTC 15-03-03 Nonsmoking Dormitory
- NTC 15-04-01 Inmate Identification (Amended 7/14/14~~[9/13/11]~~)
- NTC 15-05-01 Drug Abuse and Intoxicants Testing (Amended 7/14/14~~[7/13/11]~~)
- NTC 16-01-01 Inmate Mail~~[Regulations]~~ (Amended 7/14/14~~[9/13/11]~~)
- NTC 16-02-01 Visiting (Amended 7/14/14~~[7/13/11]~~)
- NTC 16-03-01 Inmate Furloughs (Added 7/14/14)
- NTC 16-05-01 Telephone Use and Control (Amended 7/13/11)
- NTC 17-01-01 Personal Property Control (Amended 7/14/14~~[9/13/11]~~)
- NTC 17-01-04 Disposition of Unauthorized Property (Amended 7/14/14~~[9/13/11]~~)
- NTC 17-03-01 Assessment and Orientation (Amended 7/14/14~~[7/13/11]~~)
- NTC 18-01-01 Parole Progress Report (Amended 7/13/11)
- NTC 18-02-01 Classification (Amended 9/13/11)
- NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/12/06)
- NTC 18-03-01 Conflict Notification Form (Amended 9/13/11)
- NTC 18-05-01 Transfer~~[Transfers]~~ of Inmates (Amended 7/14/14~~[7/13/11]~~)
- NTC 19-01-01 Inmate Work Programs~~[Program]~~ (Amended 7/14/14~~[7/13/11]~~)
- NTC 20-01-01 Educational Programs (Amended 7/14/14~~[7/13/11]~~)
- NTC 20-02-02 Live Work Projects in Technical School Classes (Amended 7/13/11)
- NTC 21-01-01 Library Services (Amended 7/14/14~~[5/12/06]~~)
- NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs (Amended 9/13/11)
- NTC 23-01-01 Religious Services (Amended 7/14/14~~[9/13/11]~~)
- NTC 23-03-01 Marriage of Inmates (Amended 7/13/11)
- NTC 24-04-01 Honor Housing (Amended 7/13/11)
- NTC 25-01-01 Release Preparation Program (Amended 7/14/14)
- NTC 25-01-02 Temporary and Community Center Release
- NTC 25-02-01 Funeral Trips and Bedside Visits (Amended 7/14/14)
- NTC 25-03-01 Inmate Release Procedure (Amended 7/14/14~~[7/13/11]~~)
- NTC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 7/13/11)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 26, 2014

FILED WITH LRC: July 14, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Northpoint Training Center including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Northpoint Training Center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Northpoint Training Center into compliance with ACA Standards and updates current practices for Northpoint Training Center.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: The Commissioner may implement or amend practices or procedures to ensure the safe and efficient operation of the Northpoint Training Center.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 300 employees and 1,250 inmates at the Northpoint Training Center and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with any operational changes made by this regulation.

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

question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Northpoint Training Center budgeted funds.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

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

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

(c) How much will it cost to administer this program for the first year? No new programs were created. The amendments to this regulation impact how the institution operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the institution operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)**

503 KAR 1:060. Definitions for 503 KAR Chapter 1.

RELATES TO: KRS 15.330, 15.450(1)

STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.560 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations. This administrative regulation defines terms used in 503 KAR Chapter 1.

Section 1. Definitions. (1) "Applicant" means an individual seeking certification pursuant to KRS 15.380 to 15.402 from the council as a peace officer through a law enforcement agency.

(2) "Approval" means the act of the council in deciding that the requirements for a law enforcement officer, school, or instructor, pursuant to KRS 15.310 to 15.510 and 15.990 to 15.992, have been met.

(3) "Certification" means:

(a) Approval by the council; and

(b) Issuance of a certificate from the council as evidence of its approval.

(4) "DOCJT" means the Department of Criminal Justice Training.

(5) "Fund" means the Law Enforcement Program Fund of the Kentucky Justice and Public Safety Cabinet as established in KRS 15.340.

(6) "Fund administrator" means the person responsible for administering the Law Enforcement Foundation Program Fund.

(7) "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

(8) "POPS" means the Executive Director[Staff Adviser] of the Office of Peace Officer Professional Standards, an administrative branch of the council, located at ~~the~~[415] Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102.

(9)[(8)] "Recognized school" means a school that has not been certified by the council (e.g., an out-of-state school), but considered to provide training equal to or greater than similar training offered by the department.

(10)[(9)] "Recruit" means a person attending the basic training course conducted by the basic training section of the Department of Criminal Justice Training.

(11)[(10)] "Significant life change" means divorce, change in employment, death of a family member, change of residence, bankruptcy or other economic hardship, or other modification which has substantial impact on an individual.

(12) "Submit" means mail, transmit by facsimile, or transmit via electronic means and is completed upon receipt of the person to whom it was directed.

(13)[(11)] "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the Department of Criminal Justice Training.

KEITH CAIN, Chair

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 9:00 a.m. in Room 211, Funderburk Building, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 sets forth qualifications for attending law enforcement courses at certified schools and prescribes proper definitions for procedures for application and admission to those courses.

(b) The necessity of this administrative regulation: Peace officers in the commonwealth must acquire and retain their peace officer certification in order to work and to participate in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) through the successful completion of law enforcement courses at certified schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Law Enforcement Council is vested with the function of prescribing qualifications for attending schools at which law enforcement training is provided by certified schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for admittance to law enforcement training courses required by KRS 15.440, the successful completion of which is necessary before an officer may achieve active peace officer certification or participate in KLEFPF.

(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 two definitions for use throughout 503 KAR Chapter 1.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the administrative regulations in this chapter to be clear and consistent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.160 and KRS 15.330(1)(c) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations for entry and attendance of certified law enforcement schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear, reasonable and consistent rules and procedures for qualifying and admission to certified schools that provide law enforcement courses required by KRS 15.440.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All of the approximately 412 law enforcement agencies in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The agencies should not experience any impact from this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this amendment 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): Upon an officer's qualification and

admittance, the agencies will receive an eligible, highly trained officer upon graduation from the mandated law enforcement training provided by certified schools.

(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 by the amendment of this administrative regulation.

(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 of the approximate 412 law enforcement agencies in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(c) and (h), KRS 15A.160, and KRS 15.440.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KLEC or to the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to remain the same.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

RELATES TO: KRS 15.330(1)(f), 15.404(2), 15.440(1)(e)

STATUTORY AUTHORITY: KRS 15.330(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.440(1)(e) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the council. KRS 15.404(2) requires all peace officers with active certification status to successfully complete forty (40) hours of annual in-service training certified or recognized by the council. This administrative regulation establishes requirements for graduation from an in-service training course, maintenance of in-service training records, procedures for recognizing training at noncertified schools, and procedures for receiving in-service training credit for completion of college courses.

Section 1. In-service Training Graduation Requirements. (1) A trainee in an in-service training course:

(a) Shall participate in the minimum hours prescribed for the course; and

(b) May have excused absences from the course with approval of the director of the certified school or his or her designee.

(2) An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall not be allowed excused absences from more than ten (10) ~~twenty (20)~~ percent of the hours of an in-service course.

(3) To successfully complete an in-service training course, a trainee shall:

(a) Participate in at least the minimum hours prescribed for the training course;

(b) Successfully complete a graded exercise, or pass the final examination or a reexamination;

(c) Successfully complete all graded training areas and all other assignments, exercises, and projects included in the course; and

(d) Comply with all rules and administrative regulations of the certified school, the fund, and the council.

(4) Final examinations.

(a) In a course that requires a final examination as a part of the curriculum, if a trainee fails to attain a minimum score of seventy (70) on a final examination in an in-service course, the trainee may request a second examination.

(b) The request for the second examination shall be made within seven (7) calendar days from the date a notice of failure was mailed to the trainee.

(c) The second examination shall:

1. Contain a completely different set of questions from the first examination;

2. Be administered within twenty-one (21) days from the date of the request; and

3. Be administered at a time and location designated by the supervisor of the in-service program.

(d) A failure of a trainee to meet the minimum reexamination requirements shall constitute a course failure.

Section 2. In-service Training Courses at Recognized Schools.

(1) The council may recognize schools providing in-service training which are not certified by the council.

(2) A trainee who desires to attend an in-service training course at a school that is not certified shall make a ~~written~~ request to the council at least thirty (30) days prior to the first day of the course.

(3) The council shall have the authority to grant a request

made after the course has been attended, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course.

(4) The council shall review the request and determine whether the school and the course shall be recognized based upon the following:

(a) The quality and reputation of the training school or institution;

(b) The relationship of the course to the officer's rank and responsibility; and

(c) The unavailability of the course at a certified school.

(5) If, upon review of the request, the council determines that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency and the fund administrator of its action.

(6) A trainee who fails to meet requirements established by the council for attendance at the recognized course (which shall not be less than those prescribed herein for certified schools) shall not have met the requirements of KRS 15.440(1)(e).

Section 3. In-Service Training Credit for Completion of College Courses. To enhance the professional development of law enforcement officers in the Commonwealth, the council recognizes the benefit that college courses offer in verbal and written skills, and advancement of general knowledge. Therefore, the council shall recognize a completed college course as in-service training if the conditions established in this section are met, ~~under the following conditions:~~ (1) The course shall be completed at an accredited ~~a regionally-accredited~~ college or university.

(2) The course shall be a minimum of three (3) semester credit hours.

(3) The officer shall successfully complete the course and receive a passing grade that is the equivalent of a seventy (70) percent or a letter grade of "C", or higher.

(4) The officer shall be an active fund participant or in active peace officer professional standards certification status as defined in KRS 15.386(2) while enrolled in the college course.

(5) The cost of the college course shall be the responsibility of the officer or his or her agency, and shall not be paid through the fund.

(6) An officer shall receive approval from his or her agency head prior to submitting an application to receive in-service training credit pursuant to this section. The agency head shall confirm his or her approval by signing the ~~"KLEC~~ Form 68-2, ~~"~~Application for In-service Training Credit for College Courses.

(7) An officer shall be eligible to receive in-service training credit pursuant to this section once every three (3) years.

(8) An officer who meets all requirements as established in this section shall receive forty (40) hours of in-service training designated with a "pass" score for the year in which the college course was completed.

(9) The receipt of in-service credit pursuant to this section shall not relieve an officer of mandatory training requirements pursuant to federal, state, or local law.

(10) The completed ~~"KLEC~~ Form 68-2, ~~"~~Application for In-service Training Credit for College Courses shall be sent to the KLEC Executive Director, who shall forward a copy to the fund administrator and the DOCJT Records Section Supervisor.

Section 4. Maintenance of Records. (1) Each trainee who has successfully completed an in-service course conducted by a school recognized or certified by the council (other than the Department of Criminal Justice Training) shall, at the conclusion of the course, have the school complete ~~DOCJT~~ Form 68-1, ~~"~~Application for Training Credit.

(2) The forms shall be sent to the council for verification and retention. After verification by the council, one (1) copy of the form shall be sent to the:

(a) Fund administrator; and

(b) Trainee's agency.

(3) All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator.

(4) All training records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes.

(5) All records shall be maintained in accordance with the "State Records Retention and Disposal Schedules", KRS 171.640.

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

(a) ~~"DOCJT~~ Form 68-1, ~~"~~Application for Training Credit, June 2014 edition ~~(8/22/02 Edition)~~; and

(b) ~~"KLEC~~ Form 68-2, ~~"~~Application for In-service Training Credit for College Courses, June 2014 edition ~~(12/02 Edition)~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: July 14, 2014

FILED WITH LRC: July 15, 2014 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 9:00 a.m. in Room 211, Funderburk Building, Richmond, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 comment shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dana M. Todd

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements for in-service training courses, graduation, and records.

(b) The necessity of this administrative regulation: To establish the in-service training graduation requirements, procedures by which courses can be approved for application to the in-service training requirements, and maintenance of in-service training records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 15.330(1)(h), which authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.404(2) requires all peace officers with active certification to complete forty (40) hours of in-service training annually. This administrative regulation establishes the graduation requirements and methods by which courses can be recognized for purposes of in-service training requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will decrease the percentage of excused absences allowed by an in-service trainee from twenty (20) percent to ten (10) percent of an in-service training course.

Other minor changes to forms include form reconstruction and the addition of instructions for accurate completion of forms.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 15.330(1)(h), which authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992.

(d) How the amendment will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for professional development in-service training and graduation requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all law enforcement personnel in the commonwealth, which are approximately 8,240 in number.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will only affect those in-service trainees that have excused absences from the required yearly training.

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

(a) Initially: No additional state costs.

(b) On a continuing basis: No additional state costs.

(6) What is the source of the 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as 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 applies to all law enforcement personnel in the commonwealth, which are approximately 8,240 in number. Realistically, it will only affect those that have excused absences while attending an in-service training course.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(f), (h), KRS 15.404(2), and KRS 15.440(1)(e).

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

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

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

counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The recordkeeping portion of this administrative regulation will cause minimal costs to be incurred.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amendment)

601 KAR 11:030. Restrictions and endorsements on commercial driver's licenses.

RELATES TO: KRS 281A.010 - 281A.320[Chapter 281A]

STATUTORY AUTHORITY: KRS 281A.010, 281A.040, 281A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes the Transportation Cabinet to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 281A. KRS 281A.170 requires the cabinet to promulgate an administrative regulation that outlines the restrictions on the operation of commercial vehicles and the associated codes that identify the restrictions. This administrative regulation establishes the restrictions required for operating a commercial vehicle and establishes the associated codes that identify the restrictions[KRS 281A.170 sets forth some of the restrictions which may be placed on a commercial driver's license. It further allows the Transportation Cabinet to impose other restrictions as necessary. The standard additional restrictions which may be imposed are set forth in this administrative regulation. While KRS 281A.170(2)(c)4 indicates that the restrictions not listed in statute shall be identified as 1 - 13, the numeric restriction identifiers will relate only to physical restrictions as is currently done on an operator's license. Alpha identifiers were used in KRS 281A.170 for restrictions relating to commercial vehicle equipment. The National Driver Register has requested that additional commercial vehicle restrictions be identified. For consistency, alpha restrictions will be used. Therefore, both alpha and numeric restrictions in addition to the "K" = no airbrakes; "I" = intrastate driving only and "S" = school buses only restrictions listed in KRS 281A.170 are identified in this administrative regulation].

Section 1. Numeric Restrictions. The numeric restrictions[regularly used] on the face of a commercial driver's license establish[shall relate to] the physical restrictions required for a[of the] commercial driver. The numeric restrictions shall be as established in Table 1 of this section.

| Table 1 | |
|---------|--|
| 1 | Requires Corrective Lenses to be Worn While Operating a Commercial Vehicle |
| 2 | Restricts Driver to a Vehicle Equipped with Power Brakes |
| 3 | Restricts Driver to a Vehicle Equipped with an Automatic Transmission |
| 4 | Restricts Driver to Daylight Driving Only |
| 5 | Restricts Driver to a Vehicle Equipped with Power Steering |
| 6 | Restricts Driver to a Vehicle Equipped with a Hand Accelerator |
| 7 | Restricts Driver to a Vehicle Equipped with a Hand Brake |
| 8 | Establishes Specialized Restrictions |

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[the following:

- "1" ~~corrective lenses required to be worn.~~
- "2" ~~restricts the driver to a vehicle equipped with power brakes.~~
- "3" ~~restricts the driver to a vehicle equipped with an automatic transmission.~~
- "4" ~~restricts the driver to daylight driving only.~~
- "5" ~~restricts the driver to a vehicle equipped with power steering.~~
- "6" ~~restricts the driver to a vehicle equipped with a hand accelerator.~~
- "7" ~~restricts the driver to a vehicle equipped with a hand brake.~~
- "8" ~~other restrictions imposed.]~~

Section 2. Alpha Restrictions. (1) The alpha restrictions on the face of a commercial driver's license and commercial driver's permit shall establish~~regularly used on a commercial driver's license shall relate to~~ the restrictions pertaining to~~on~~ the type~~types~~ of commercial vehicle the driver shall be~~is~~ allowed to operate~~with the exception of the "K", "I", and "S" restrictions set forth in KRS 281A.170(2)(e)4].~~

(2) The alpha restrictions for a commercial driver's license shall be as established in Table 2 of this subsection.

| Table 2 | |
|---------|---|
| L | Non Air Brake Equipped Commercial Motor Vehicle |
| Z | Non Full Air Brake Equipped Commercial Motor Vehicle |
| E | Non Manual Transmission Equipped Commercial Motor Vehicle |
| O | Non Tractor Trailer Commercial Motor Vehicle |
| M | Non Class A Passenger Vehicle |
| N | Non Class A and B Passenger Vehicle |
| K | Intrastate Only |
| V | Medical Variance |

(3) The alpha restrictions for a commercial driver's permit shall be as established in Table 3 of this subsection.

| Table 3 | |
|---------|--|
| P | Non Passenger in a Commercial Motor Vehicle Bus |
| X | Non Cargo in a Commercial Motor Vehicle Tank Vehicle |

Section 3. "F" Restriction. The "F" restriction shall appear ~~[only] on a~~ on the commercial driver's license issued ~~[on a limited basis]~~ to an employee of a farm-related service industry pursuant to ~~[as set forth in]~~ 601 KAR 11:080.

RODENY KUHLE, Commissioner

MIKE HANCOCK, Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: June 16, 2014

FILED WITH LRC: June 17, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2014 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business, September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann Dangelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the restrictions required for operating a commercial vehicle and the associated codes to identify the restrictions.

(b) The necessity of this administrative regulation: KRS 281A.170 requires the cabinet to promulgate an administrative regulation that outlines the restrictions on the operation of commercial vehicles and the associated codes that identify the restrictions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 281A.170 by establishing the restrictions and the associated codes for the drivers of commercial vehicles as required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will update the present standards and restrictions to better inform the general public.

(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 both update the language to better conform with KRS 13A, and add the most current tables of numeric and alpha restrictions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 1994. This amendment is necessary to update the administrative regulation in conformity with recent statutory changes made to KRS 281A.010.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the cabinet to promulgate administrative regulations that outline restrictions on the operation of commercial vehicle and the codes that identify the restrictions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will inform the public of the most current restrictions and codes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the cabinet's Department of Motor Vehicles, drivers of commercial vehicles in the state of Kentucky, trucking companies, and law enforcement officials.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial drivers will have the new restrictions added to their CDL at their next scheduled visit to their Circuit Clerk offices. The entities will have to learn the definitions for the new restriction codes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Drivers of commercial vehicles in Kentucky will have the most current information.

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

(a) Initially: \$175,000

(b) On a continuing basis: There will be no continuing yearly costs.

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

implementation and enforcement of this administrative regulation: Federal grant money.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. The alpha and numeric restrictions in the administrative regulation apply equally to all drivers of commercial vehicles.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281A.010, 281A.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be an effect on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? \$175,000

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:230. Extended hours supplemental licenses.

RELATES TO: KRS 243.030(31), 243.050

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.050[(5)] establishes the extended hours supplemental license[a new class of supplemental liquor licenses] and authorizes the board by administrative regulation to set the necessary conditions and restrictions upon this class of license. This administrative regulation establishes the conditions and restrictions for extended hours supplemental licenses.

Section 1. Definition. "Prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplemental License.

Section 2. This administrative regulation establishes an Extended Hours Supplemental License for the retail sale of alcoholic beverages, distilled spirits, wine, and malt beverages by the drink.[This license is divided into four (4) categories:]

(1) A convention center holding a nonquota type 1 license,

pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.[The Convention Center Extended Hours Supplemental License;]

(2) A horse racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.[The Horse Race Track Extended Hours Supplemental License;]

(3) An automobile racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.[The Commercial Airport Extended Hours Supplemental License; and]

(4) A railroad system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(5) A state park holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.

(6) A commercial airlines system or charter flight system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(7) A licensee holding a retail drink license pursuant to KRS Chapter 243 located within a commercial airport shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.

(8) A qualified historical site licensee holding an extended hours supplemental license shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.[The Automobile Race Track Extended Hours Supplemental License.]

Section 3. The supplemental licenses may be issued by the distilled spirits administrator and malt beverage administrator who, pursuant to KRS 243.050[(5)], shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, or the economic development of Kentucky or any part thereof.[Section 4. (1) The Convention Center Extended Hours Supplemental License may be issued to any facility which holds a convention center or convention hotel complex license pursuant to KRS 243.050(4). The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.]

(2) The Horse Race Track Extended Hours Supplemental License may be issued to any horse race track licensed to conduct a race meeting under KRS Chapter 230 and which is the holder of a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.

(3) The Commercial Airport Extended Hours Supplemental License may be issued to any commercial airport through which 500,000 or more passengers arrive or depart annually and which holds a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be Monday through Saturday, prevailing opening time until 4 a.m., and Sundays, 1 p.m. until 4 a.m.

(4) The Automobile Race Track Extended Hours Supplemental License may be issued to any facility which holds an automobile race track license pursuant to the provisions of KRS 243.050(5) and has a seating capacity of at least 30,000 people. The hours of operation under this license shall be prevailing time for Monday through Saturday and Sunday 1 p.m. until prevailing time for weekday closing.

Section 5. An Extended Hours Supplemental License shall not be issued to any applicant that does not hold one (1) or more licenses authorizing the retail sale of distilled spirits and wine by the drink.

Section 6. Only one (1) Extended Hours Supplemental License

shall be required for each licensed premises.

~~Section 7. The annual fee for the Extended Hours Supplemental License appears in KRS 243.030 (30) and shall be in addition to all other licenses and license fees due by the holder in connection with the retailing of alcoholic beverages.~~

~~Section 8. The holder of an Extended Hours Supplemental License may be required, from time to time, to furnish the administrators information as requested indicating continued qualification to hold the Extended Hours Supplemental License.~~

~~Section 9. Each applicant for an extended hours supplemental license shall complete and submit to the Office of Alcoholic Beverage Control the "ABC Basic" application incorporated by reference in 804 KAR 4:400 and the "Schedule 'X' Airport, Convention Center, Convention Hotel Complex, Automobile Race Track, Horse Race Track, Entertainment Destination Center License" form as set forth in 804 KAR 4:410.]~~

FREDERICK A. HIGDON, Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by August 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hours of operations and licensing procedures for extended hours supplemental licenses.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the conditions for extended hours supplemental license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.050 authorizes the department to establish the restrictions on extended hours supplemental license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation establishes the hours of operations and licensing procedures for extended hours supplemental license, as established by KRS 243.050.

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

(a) How the amendment will change this existing administrative regulation: This amendment to this administrative regulation cleans up the licensees that may hold an extended hours supplemental license, and incorporates statutory changes to include licensees located inside commercial airports.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to establish the hours of operations and licensing

procedures for extended hours supplemental licenses.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.050 authorizes the department to establish hours of operations and restrictions on extended hours supplemental licenses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation cleans up the regulation by deleting licenses and forms that no longer exist, incorporates statutory changes for licensees authorized to hold an extended hours supplemental license, and establishing hours of operation for the holder of an extended hours supplemental license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect extended hours supplemental licensees.

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

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: The previously mentioned businesses will not have to take any actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue to the aforementioned entities.

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Alcoholic Beverage Control and any state park holding an NQ1 and extended hours supplemental license will be impacted by this administrative regulation

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 243.050 authorizes the department to promulgate administrative regulations relating to an extended hours supplemental license.

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

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

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

counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)**

804 KAR 4:400. ABC basic application and renewal form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;

(2) A temporary license; or

(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

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

(a) "Basic Application for Alcoholic Beverage License", July 2014[November 2013]; and

(b) "Application for License Renewal", February 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by August 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates the basic application for an alcoholic beverage license by reference.

(b) The necessity of this administrative regulation: KRS 241.060(1) authorized the board to promulgate administrative regulations governing procedures relative to the applications for and revocation of licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation incorporates the basic application for an alcoholic beverage license, as required by KRS 241.060(1).

(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 ensures the Basic Application complies with legislative changes that occurred during the 2014 General Assembly. This amendment further adds an applicant affidavit to the basic application, and makes various changes to streamline the application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with legislation enacted during by the 2014 General Assembly. This amendment also informs applicants that the information they provide must be truthful and correct, under threat of perjury.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the basic application for alcoholic beverage licenses is compliant with new statutes when they become effective, as well as making the application easier for applicants to complete by streamlining the application.

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

administrative regulation: This administrative regulation affects all applicants for an alcoholic beverage license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licenses that were affected by legislation enacted during the 2014 General Assembly will have to answer additional questions, in compliance with new statute changes. All applicants will be required to complete the applicant affidavit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is used for the implement the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:410. Special applications and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060, 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

Section 1. Special application forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable special application form for the specific license type for which the application is made. The special application forms are listed below:

(1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application;

(2) Special Temporary License Application;[or]

(3) Supplemental License Application; or

(4) Distiller's License: Change of License Application.

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

(1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue;

(2) ABC Form 714 to be submitted to the Department of Alcoholic Beverage Control; or

(3) ABC Form 715 to be submitted to the Department of Alcoholic Beverage Control.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", July 2014~~[December, 2013]~~;

(b) "Special Temporary License Application", July 2014~~[December, 2013]~~;

(c) "Supplemental License Application", July 2014~~[December, 2013]~~;

(d) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2013;

(e) "ABC Form 714", July 2014~~[June 2013]~~; and

(f) "ABC Form 715", July 2014~~[June 2013]~~; and

(g) "Distiller's License: Change of License Application", July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by August 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 this date, the hearing may be cancelled. This hearing is open to the public.

Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the forms to be used to apply for various license types.

(b) The necessity of this administrative regulation: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation incorporates forms required by KRS 243.380(2) and 243.390.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes various changes to the material incorporated by reference in the regulation. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to streamline the application process for the timely processing of applications. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. It also allows licensed distillers who wish to transition to the Class B Distiller's license to do so.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation incorporates forms required by KRS 243.380(2) and 243.390.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all new applicants for the alcoholic beverage licenses listed in Sections (1) and (2) of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will be required to complete the new incorporated forms when applying for an alcoholic beverage license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implement the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Department of Alcoholic Beverage Control is the only state or local entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations related to alcoholic beverage licenses.

3. Estimate the effect of this administrative regulation on the expenditures of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation will be in effect. There will be no effect on revenue or expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(New Administrative Regulation)

201 KAR 15:015. Per diem compensation of board members.

RELATES TO: KRS 325.230, 325.240

STATUTORY AUTHORITY: KRS 325.230(2), 325.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.230(2) requires the board to establish the amount of per diem compensation to be paid to board members, not to exceed \$200. This administrative regulation establishes the per diem amount to be received by board members.

Section 1. Each member of the board shall receive \$175.00 for each day spent in the discharge of his or her official duties.

KATHLEEN KEARNEY SCHELL, Counsel

LETICIA CHANDLER, Executive Director

APPROVED BY AGENCY: June 16, 2014

FILED WITH LRC: June 18, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 11, 2014, at 9:00 a.m., at The Office of the Board of Embalmers and Funeral Directors, 8412 Westport Road, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kathleen Kearney Schell, Counsel for the Board of Embalmers and Funeral Directors, 422 East Seventh Street, Jeffersonville, IN 47130, phone 812-282-2646, fax 812-284-9621, email KathleenSchell@aol.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathleen Kearney Schell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation increases the per diem compensation for members of the Board of Embalmers and Funeral Directors performing official duties related to the Board of Embalmers and Funeral Directors.

(b) The necessity of this administrative regulation: The board has not had an increase in per diem compensation since 1996, eighteen (18) years ago. The statute provided a \$100 per diem amount KRS 316 170 that was effective July 15, 1996. The board members have not had an increase in the per diem compensation for eighteen (18) years.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because the authorizing statute allows up to \$200 a day per diem.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes because it defines the exact amount of per diem within the range provided by the statute.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative

regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are five (5) board members appointed by the Governor: four (4) are licensed embalmers and funeral directors, and one (1) is a consumer member. Only the board members will be impacted by being compensated with a more reasonable per diem for often a nine (9) or ten (10) hour day of work.

(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 board members will not be impacted or need to do anything to comply with the administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions necessary by the board members. They will merely be receiving a little bit more pay for time performing their official duties.

(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 any of the board members to implement the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be an increase in per diem.

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

(a) Initially: There will be no initial costs to administer this regulation because board members were already being paid a per diem, the same office staff time, and processing will occur.

(b) On a continuing basis: There will be no continuing costs to administer this regulation because board members were already being paid a per diem, the same office staff time, and processing will occur.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the Board's budget funds are accrued by annual license renewal fees to licensees and fines imposed for statutory violations of licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the per diem fee for board members.

(9) TIERING: Is tiering applied? Tiering is not applied as everyone is treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The part or division of state government affected is the Board of Embalmers and Funeral Directors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Statute involved is KRS 325.230 (2) (3), which authorizes the 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.

There should be no impact on cost or revenues of the Board of Embalmers and Funeral Directors for the first full year or thereafter because it is revenue neutral. The board imposes fines against licensees and also collects license renewal fees so there are sufficient funds in the Board budget to pay the increased per diem.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the Board of Embalmers and Funeral Directors for the first full year.

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year. There are already built-in costs of staff to file the appropriate electronic requests for payment of board members per diem compensation and that activity cost would be identical. The cost will be in the increase of per diem for each board member, for each day they perform duties for board business.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years. There are already built-in costs of staff to file the appropriate electronic requests for payment of board members per diem compensation and that activity cost would be identical. The cost will be in the increase of per diem for each board member, for each day they perform duties for board business.

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 Professional Counselors
(New Administrative Regulation)**

201 KAR 36:080. Inactive and retired licensure status.

RELATES TO: KRS 335.515(9)

STATUTORY AUTHORITY: KRS 335.515(3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(9) enables the board to grant retired or inactive status to licensees under the conditions set forth by administrative regulation. This administrative regulation establishes the requirements for retired and inactive licensure status.

Section 1. Inactive licensure status may be granted to a licensee pursuant to KRS 335.515(9) upon written request to the board. (1) The licensee shall be relieved of his obligation to pay the renewal fee, but shall meet the requirements for continuing education as established in 201 KAR 36:030.

(2) The licensee may return to active status within three (3) years of being granted inactive licensure status upon:

(a) Written notification to the board;

(b) Payment of the current renewal fee as set forth in 201 KAR 36:020; and

(c) Demonstration of compliance with all continuing education requirements, as established in 201 KAR 36:030, for each year during the period of inactive licensure status.

(3)(a) If the licensee does not reactivate his license before the third anniversary date of the granting of inactive licensure status, then the license shall be forfeited.

(b) Following forfeiture of a license under the provisions of this section, any person desiring to practice professional counseling in the Commonwealth of Kentucky shall:

1. File a new application for licensure with the board;

2. Pay the initial fees for application and licensure; and

3. Meet current requirements for initial licensure, as established by statute and administrative regulation.

Section 2. Retired status may be granted to a licensee pursuant to KRS 335.515(9) upon written request to the board.

(1) A licensee may be granted retired status if that individual:

(a) Is at least sixty-five (65) years old;

(b) Has requested retired status at the beginning of the license renewal period; and

(c) Has retired from practice in all jurisdictions and is not conducting an active practice in any jurisdiction.

(2) A licensee who has been granted retired status shall not be required to meet the continuing education requirements under 201 KAR 36:030.

(3) The licensee shall be relieved of the obligation to pay the renewal fee.

(4) Following the retirement of a license under the provisions of this subsection, any person desiring to practice professional counseling in the Commonwealth of Kentucky shall:

1. File a new application for licensure with the board;

2. Pay the initial fees for application and licensure; and

3. Meet current requirements for initial licensure, as established by statute and administrative regulation, including retaking the examination.

MARTIN WESLEY, Chair

APPROVED BY AGENCY: June 20, 2014

FILED WITH LRC: July 3, 2014 at 1 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014 at 2:00 pm at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Diana Jarboe, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diana Jarboe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for inactive and retired licensure status..

(b) The necessity of this administrative regulation: This administrative regulation enables the board to oversee the requirements for inactive and retired licensure status..

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 335.515(9) enables the board to grant retired or inactive status to licensees under the conditions set forth by administrative regulation. This administrative regulation establishes the requirements relating to inactive and retired status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements relating to inactive and retired status.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation..

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1,200 persons in the Commonwealth, but fewer than 100 will qualify for retired or inactive status.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation provides that a licensee will apply for retired or inactive status.

(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 additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board expects that retired and inactive persons will be able to escrow their license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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 fee 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 does not establish any fees or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all persons seeking retired or inactive status equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), (9)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None, this is not a revenue generating regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None, this is not a revenue generating regulation.

(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:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of the Reclamation Guaranty Fund (New Administrative Regulation)

405 KAR 10:025. Extension of performance bond subsidization.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465, 350.500 – 350.521

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.518(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to ensure bonds are adequate to perform reclamation in the event of forfeiture. This administrative regulation establishes information related to the operation of the Kentucky Reclamation Guaranty Fund.

Section 1. Applicability. This administrative regulation shall apply only to entities seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

Section 2. Performance Bond Subsidization. (1) Performance bond subsidization may be extended to an applicant who was not a member of the former voluntary bond pool fund prior to its dissolution if the:

(a) Applicant intends to obtain its permit by transfer from a member of the former Kentucky Voluntary Bond Pool;

(b) Permit to which the applicant intends to succeed meets one (1) or more of the criteria for the cabinet to seek bond forfeiture under 405 KAR 10:050, Section 3;

(c) Applicant meets the requirements of this administrative regulation; and

(d) Commission determines it is in the best interest of the KRGF pursuant to KRS 350.509(1).

(2) If the commission determines the criteria for performance bond subsidization extension have been met, the bonds previously issued by the KRGF to the member of the former voluntary bond pool fund shall be substituted for bonds newly issued by the KRGF in accordance with the provisions of 405 KAR 10:015, Section 5.

(3) Subsequent to the extension of performance bond subsidization for the issuance of a successor permit pursuant to subsection (2) of this section, the KRGF may extend additional subsidization to the permittee for the permit to enable the permittee to complete mining and reclamation operations, if the commission determines it is in the best interest of the KRGF. The commission shall review an applicant's ability to meet the approval requirements of this administrative regulation when an application for additional subsidization has been submitted.

(4) Only permits with bonds previously covered by the former voluntary bond pool fund shall be eligible for performance bond subsidization. Other permits held by the applicant shall not be subsidized by the KRGF.

Section 3. Applicant Criteria. (1) Applicants for extension of performance bond subsidization shall submit an application on the Application for Performance Bond Subsidization for Permit Succession, RGF-4 form, which shall include:

(a) Identification of the permittee which the applicant wishes to succeed;

(b) Identification of permits the applicant intends to obtain by

transfer;

(c) Information regarding the financial standing and compliance record of the applicant; and

(d) Any other information the commission needs to make a determination.

(2)(a) The commission shall consider applications on a case-by-case basis and meeting the criteria under this section shall not be grounds for automatic performance bond subsidization. An applicant shall be allowed thirty (30) calendar days after receipt of the commission's determination to contest the determination in writing.

(b) The written notice shall include:

1. An explanation of the nature of the contest; and
2. The documentation relied upon by the applicant.

(3) The applicant for extended performance bond subsidization shall be in good financial standing. The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the KRGF and the cabinet. The commission shall consider the following financial ratios and related financial information:

- (a) The ratio of current assets to current liabilities;
- (b) The ratio of net income to net sales;
- (c) The ratio of total liabilities to stockholders' equity;
- (d) The ratio of net income to owners' equity;
- (e) The ratio of owners' equity to total assets; and
- (f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

(4) The applicant for extended performance bond subsidization shall have held, under the same name or other name as provided in subsection (5) of this section, a permit issued by the cabinet to conduct surface mining operations in Kentucky or by an authorized agency governing surface mining operations in another state or territory, for a period of at least five (5) of the seven (7) years immediately preceding the application for extended performance bond subsidization, and have exhibited an approved compliance record as detailed by Section 4 of this administrative regulation.

(5) If the applicant cannot satisfy the requirements of subsection (4) of this section, then the following types of permits held by persons other than the applicant may be used to satisfy those requirements:

- (a) Permits issued to a person who owns fifty (50) percent or more of the applicant;
- (b) Permits issued to a person who is owned fifty (50) percent or more by a person meeting the requirements of subsection (4) of this section; or
- (c) Permits issued to persons whose combined ownership of the applicant is fifty (50) percent or more, provided each person meets the requirements set forth in subsection (4) of this section.

Section 4. Determination of Compliance Record. (1) An applicant shall be deemed to have an approved compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership and control with the applicant meet all the following criteria:

- (a) Has never committed a violation for mining without having first obtained the required permit;
- (b) Has never forfeited a bond or had a permit revoked;
- (c) Has never avoided forfeiture of a bond because a surety performed reclamation work in order to avoid forfeiture;
- (d) Has never been determined to have demonstrated a pattern of violations;
- (e) Has not been issued more than one (1) order for cessation and immediate compliance for failure to complete required remedial measures in the most recent thirty-six (36) months of operation and the order was abated as ordered in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation;
- (f) Has not been issued more than one (1) order for cessation and immediate compliance for creating an imminent danger to the health and safety of the public or causing significant, imminent environmental harm in the most recent thirty-six (36) months of

operation and the order was abated as ordered in a timely manner;

(g) Has not committed more than one (1) violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or regulation in the most recent thirty-six (36) months of operation and the violation was abated in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated with no civil penalty;

(h) Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 or other applicable state or federal statute or regulation on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated with no civil penalty; and

(i) Has not had civil penalties remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(2) To the extent the information is available, the commission may take into account the performance of the applicant and each person who owns or controls, is owned or controlled by, or is under common ownership or control with the applicant, in other states and on federal lands and Indian lands under criteria similar or equivalent to those in this section.

Section 5. Compliance Review for Continued Subsidization. The commission shall review the compliance record of former applicants for extended bond subsidization. If the commission determines that the permittee no longer satisfies any of the criteria in Section 4(1) of this administrative regulation, it may advise the cabinet that the permittee is no longer eligible for performance bond subsidization. Upon receipt of this notice, the cabinet shall immediately order the permittee to cease surface coal mining operations on that permit until it has obtained alternate bond coverage. During the period of cessation, the permittee shall maintain the permit in compliance with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 6. Permit Specific Bond. (1) For each permit obtained by transfer from a member of the former voluntary bond pool fund, a permit-specific bond at a rate determined by the commission but no less than \$2,000 per acre shall be posted.

(2) Permit specific bonds posted pursuant to this section shall be released in accordance with the provisions of 405 KAR 10:015, Section 2.

Section 7. Incorporation by Reference. (1) "Application for Performance Bond Subsidization for Permit Succession", April 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 30, 2014

FILED WITH LRC: June 30, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2014 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the

proposed administrative regulation. Written comments shall be accepted until close of business September 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria necessary for entities to qualify to receive performance bond subsidies when a permit that was in the former voluntary bond pool is transferred to them. The administrative regulation applies only to entities seeking to obtain by transfer the permit of a current member of the Kentucky Reclamation Guaranty Fund (KRGF) who was a member of the former Kentucky Voluntary Bond Pool.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the qualifying criteria for extended performance bond subsidization of permits when transferred from members of the former voluntary bond pool to KRGF members that were not former voluntary bond pool members.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.518(5) authorizes the Kentucky Reclamation Guaranty Fund Commission (KRGFC) to establish eligibility standards for entities interested in seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the criteria authorized by KRS 350.518(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could impact the 261 KRGF members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require the entities that desire to transfer current permits from former voluntary bond pool members to meet certain criteria in order to receive performance bond subsidization of the transferred permit under the KRGF.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each permittee will vary depending on the amount of reclamation bond required in order to transfer the permit. There will be no cost to members of the KRGF not involved in the permit transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By meeting the criteria of this administrative regulation the entity will receive performance bond subsidization of the permit that was transferred from the former voluntary bond pool. Members of the KRGF not involved in the

permit transfer will benefit from the avoidance of bond forfeitures and the resulting withdrawals of KRGF assets to complete reclamation of the permits.

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

(a) Initially: This new administrative regulation will not significantly increase the cost to the Office of the Reclamation Guaranty Fund (ORGF).

(b) On a continuing basis: Future costs would remain essentially unchanged for this function in the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to this proposed 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 increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that desire continued performance bond subsidization of former voluntary bond pool permits upon transfer will be required to meet the same criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, Office of the Reclamation Guaranty Fund, and the KRGFC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.518(5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any new revenue for the state or local government. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate revenue in subsequent years. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at \$600,000.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

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

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

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)

804 KAR 4:351. Repeal of 804 KAR 4:070, 804 KAR 4:350, and 804 KAR 4:420.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations to govern procedures relative to the supervision and control of malt beverages and distilled spirits and wine. This administrative regulation repeals 804 KAR 4:070, 804 KAR 4:350, and 804 KAR 4:420, which have been codified into statute or no longer exist.

Section 1. The following administrative regulations are hereby repealed:

- (1) 804 KAR 4:070, Special industrial alcohol;
- (2) 804 KAR 4:350, Out-of-state brewer license; and
- (3) 804 KAR 4:420, Small farm winery wholesaler license application forms.

FREDERICK A. HIGDON, Commissioner

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014 at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by August 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 1:060, 804 KAR 4:350, and 804 KAR 4:420.

(b) The necessity of this administrative regulation: The existing administrative regulations established nonexistent licenses, and set out duplicative procedures for applying for a license. The licenses are now codified in statute or no longer exist. This administrative regulation repeals them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The repeal of this administrative regulation will eliminate a license that no longer

exists, and delete a license in administrative regulation is codified in statute. This administrative regulation also repeals duplicative regulations covering the application for a small farm winery wholesaler license.

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

(a) How the amendment will change this existing administrative regulation: 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: No individuals, businesses, organizations, or state and local governments are affected by the repeal.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No entities will be affected by this repealer.

(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): There is no cost to repeal this regulation.

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

(a) Initially: No extra costs are anticipated to repeal these administrative regulations.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is used to implement and enforce the repealed administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control will be impacted by this administrative regulation as this license type no longer exists.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts). No revenue will be generated by this administrative regulation.

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

revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(New Administrative Regulation)**

804 KAR 14:010. Malt beverage and wine for personal use.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the use and manufacture of alcoholic beverages. This administrative regulation allows individuals to produce malt beverages and wine for personal use.

Section 1. (1) A person twenty-one (21) years of age or older may produce malt beverages for personal or family use.

(2) Malt beverage produced for personal use shall not be sold.

(3) Malt beverage produced for personal use shall not be given to any public facility to give or sell to patrons.

(4) The aggregate amount of malt beverage produced for personal use shall not exceed:

(a) 100 gallons per calendar year if there is only one (1) adult who is legally allowed to consume alcoholic beverages in the household; or

(b) 200 gallons per calendar year if there are two (2) or more adults who are legally permitted to consume alcoholic beverages in the household.

Section 2. (1) A person twenty-one (21) years of age or older may produce wine for personal use.

(2) Wine produced for personal use shall not be sold.

(3) Wine produced for personal use shall not be given to any public facility to give or sell to patrons.

(4) The aggregate amount of wine produced for personal or family use shall not exceed:

(a) 100 gallons per calendar year if there is only one (1) adult who is legally allowed to consume alcoholic beverages in the household; or

(b) 200 gallons per calendar year if there are two (2) or more adults who are legally permitted to consume alcoholic beverages in the household.

Section 3. Malt beverages and wine produced for household consumption may be entered into competitions at regularly organized fairs for prizes. (1) Competitions may be held at a licensed or unlicensed premise.

(2) Malt beverages and wine produced for household consumption may be transported or mailed from the producer's home to the site of the competition or to the competition's designee.

(3) Judges of the competition shall be at least twenty-one (21) years of age, and may only consume for judging purposes.

(4) Malt beverages or wine entered into a competition shall not be sold to, sampled by, or tasted by the general public.

FREDERICK A. HIGDON, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: July 10, 2014

FILED WITH LRC: July 15, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2014, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by August 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until close of business on September 2, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sam Crain, Paralegal Consultant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sam Crain

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows individuals to produce malt beverages and wine for personal use. The regulation establishes limits on the aggregate amounts an individual may produce in each calendar year without a license.

(b) The necessity of this administrative regulation: KRS 241.060 requires the board to regulate the use and manufacture of alcoholic beverages. This regulation is necessary to regulate individuals who produce malt beverages and wine for personal use without a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 (1) authorizes the board promulgate administrative regulations supervising and controlling the use and manufacture of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation enables the board to execute its KRS 241.060(1) duty of overseeing the use and manufacture of alcoholic beverages.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(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 individuals who intend to produce malt beverages and wine for personal use.

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

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this administrative regulation.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The previously mentioned individuals will be permitted to produce malt beverages and wine for personal use.

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

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Kentucky Department of Alcoholic Beverage Control is the only government entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations relative to use and manufacture of alcoholic beverages.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts). This administrative regulation will have no effect on expenditures or revenue of any level of government.

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (New Administrative Regulation)

902 KAR 20:430. Facilities specifications, operation and services; behavioral health services organizations.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 210.005(2), (3), 309.080, 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.042

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, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations which provide behavioral health services necessary to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 6 of this administrative regulation.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(6) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(7) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(8) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(9) "Peer support specialist" means a paraprofessional who (a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of a:

1. Physician;
2. Psychiatrist;
3. Licensed psychologist;
4. Licensed psychological practitioner;
5. Licensed psychological associate;
6. Licensed clinical social worker;
7. Licensed marriage and family therapist;
8. Licensed professional clinical counselor;
9. Certified social worker;
10. Licensed marriage and family therapist associate;
11. Licensed professional counselor associate;
12. Licensed professional art therapist; or
13. Licensed professional art therapist associate.

(10) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(11) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

- (a) Intoxication;
- (b) Withdrawal; or
- (c) A substance induced mental health disorder.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 6 of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for

License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 6 of this administrative regulation, to meet client needs; and

(b) Become accredited within one (1) year of initial licensure by the:

1. Joint Commission;
2. Commission on Accreditation of Rehabilitation Facilities; or
3. Council on Accreditation.

(2) The cabinet shall revoke a license if a behavioral health services organization fails to become accredited in accordance with subsection (1)(b) of this section or fails to maintain accreditation.

(3) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

- (a) The behavioral health services organization;
- (b) The establishment of administrative policy; and
- (c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Public health; or
16. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a

minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;
2. Physician;
3. Certified or licensed psychologist;
4. Licensed psychological practitioner;
5. Advanced practice registered nurse;
6. Licensed professional clinical counselor;
7. Licensed marriage and family therapist;
8. Licensed professional art therapist;
9. Licensed board certified behavior analyst; or
10. Licensed clinical social worker; and

(b) A sufficient number of personnel to provide behavioral health services, which may include:

1. Behavioral health professionals;
2. Behavioral health professionals under clinical supervision;
3. Licensed behavior analysts;
4. Licensed behavior assistant analysts;
5. Case managers as described in subsections (6), (7), and (8) of this section;
6. Peer support specialists;
7. Certified alcohol and drug counselors; or
8. Community support associates.

(6) A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Have a bachelor's degree in a human services field, including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or

8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.

(7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring

disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training approved by the DBHDID within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual basis and face-to-face.

(8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (6)(a);

(c)1. Have successfully completed case management training approved by DBHDID within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual basis and face-to-face.

(9) Background checks.

(a) The executive director and all personnel of a behavioral health services organization shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and

2. Not have a criminal conviction, or plea of guilty, to a:

- a. Sex crime as specified in KRS 17.500;
- b. Violent crime as specified in KRS 439.3401;
- c. Criminal offense against a minor as specified in KRS 17.500;

or

d. Class A felony.

(b) A behavioral health services organization shall perform annual criminal record checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

(10) Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all personnel and include:

(a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;

(b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;

(c) A client grievance procedure as described in subsection (14) of this section;

(d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and

3. An annual training program for staff which may include:

- a. Detection and reporting of abuse, neglect, or exploitation;

- b. Behavioral management, including de-escalation training;
- c. Physical management procedures and techniques; and
- d. Emergency and safety procedures.

(11) Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

- (a) Name and address;
 - (b) Verification of all training and experience, including licensure, certification, registration, or renewals;
 - (c) Verification of submission to the background check required by subsection (9) of this administrative regulation;
 - (d) Performance appraisals; and
 - (e) Employee incident reports.
- (12) After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to face-to-face emergency services twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

(13) Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

- 1. Discharge;
- 2. Transfer; or
- 3. Referral to another service provider, if appropriate.

(14) Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

(a) Identification of a behavioral health services organization ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

- 1. His or her right to file a grievance;
- 2. The process for filing a grievance; and
- 3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

Section 5. Residential Services for Substance Use Disorders.

(1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services.

Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

- (a) Screening;
- (b) Assessment;
- (c) Crisis intervention;
- (d) Mobile crisis services;
- (e) Day treatment;
- (f) Peer support;
- (g) Intensive outpatient program services;
- (h) Individual outpatient therapy;
- (i) Group outpatient therapy;
- (j) Family outpatient therapy;
- (k) Collateral outpatient therapy;
- (l) Screening, brief intervention and referral to treatment; or
- (m) Targeted case management.

(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:

(a) Screening which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, or certified alcohol and drug counselor to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas which may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing which shall:

1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. On-site at the behavioral health services organization's facility;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter;

4. May include verbal de-escalation, risk assessment, or cognitive therapy;

5. Shall be provided by a:

- Behavioral health professional;
- Behavioral health professional under clinical supervision; or
- Certified alcohol and drug counselor;

6. Shall be followed by a referral to noncrisis services, if applicable; and

7. May include:

- Further service prevention planning, including:
 - Lethal means reduction for suicide risk; or
 - Substance use disorder relapse prevention; or
- Verbal de-escalation, risk assessment, or cognitive therapy;
- Mobile crisis services which shall:
 - Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 - Be provided for a duration of less than twenty-four (24) hours;
 - Not be an overnight service; and
 - Be a crisis response in a home or community setting to provide an immediate evaluation, triage, and access to acute substance use disorder services including treatment and supports to:
 - Reduce symptoms or harm; or
 - Safely transition an individual in an acute crisis to appropriate crisis stabilization and detoxification supports or services;

5. Be provided by a:

- Behavioral health professional;
- Behavioral health professional under clinical supervision; or
- Certified alcohol and drug counselor; and

6. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment which shall:

- Be a nonresidential, intensive treatment program designed for children who:
 - Have a substance use disorder, mental health disorder, or co-occurring disorder;
 - Are under twenty-one (21) years of age; and
 - Are at high risk of out-of-home placement due to a behavioral health issue;
- Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;
- Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;
- Include the following:
 - Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - Behavior management and social skill training;
 - Independent living skills that correlate to the age and development stage of the client; or
 - Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;
- Be provided as follows:
 - In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - On school days and during scheduled school breaks;
 - In coordination with the child's individual educational plan if the child has an individual educational plan;
 - By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, or a peer support specialist; and
 - According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support which shall:

- Be provided by a peer support specialist;
- Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;
- Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and
- Be identified in the client's plan of care;

(h) Intensive outpatient program services which shall:

- Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
- Be provided at least three (3) hours per day at least three (3) days per week;
- Include the following:
 - Individual outpatient therapy;
 - Group outpatient therapy;
 - Family outpatient therapy unless contraindicated;
 - Crisis intervention; or
 - Psycho-education during which the client or client's family member shall be:
 - Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
 - Taught how to cope with the client's diagnosis or condition in a successful manner;
- Include a treatment plan which shall:
 - Be individualized; and
 - Focus on stabilization and transition to a lower level of care;
- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;
- Include access to a board-certified or board-eligible psychiatrist for consultation;
- Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and
- Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(i) Individual outpatient therapy which shall:

- Be provided to promote the:
 - Health and wellbeing of the client; or
 - Recovery from a substance related disorder;
- Consist of:
 - A face-to-face encounter with the client; and
 - A behavioral health therapeutic intervention provided in accordance with the client's plan of care;
- Be aimed at:
 - Reducing adverse symptoms;
 - Reducing or eliminating the presenting problem of the client; and
 - Improving functioning;
- Not exceed three (3) hours per day; and
- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(j) Group outpatient therapy which shall:

- Be provided to promote the:
 - Health and wellbeing of the client; or
 - Recovery from a substance related disorder;
- Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;
- Be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;
- Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy which shall:

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional or a behavioral health professional under clinical supervision;

(l) Collateral outpatient therapy which shall consist of a face-to-face behavioral health consultation:

1. With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Service planning which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of mental disability;

2. Restore a client's functional level to the client's best possible functional level; and

3. Develop a service plan which:

a. Shall be directed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan;

(n) Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(o) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual

for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(p) Assertive community treatment for mental health disorders which shall:

1. Include assessment, treatment planning, case management, psychiatric services, medication prescribing and monitoring, individual and group therapy, peer support, mobile crisis services, mental health consultation, family support, and basic living skills;

2. Be provided by a multidisciplinary team of at least four (4) professionals, including a psychiatrist, nurse, case manager, peer support specialist and any other behavioral health professional or behavioral health professional under clinical supervision; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(q) Comprehensive community support services which shall:

1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

a. Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;

c. Improve emotional regulation skills;

d. Improve crisis coping skills; and

e. Develop and enhance interpersonal skills; and

3. Be provided by a;

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Community support associate;

d. Licensed behavior analyst; or

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(r) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability which shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

a. Improving daily living skills;

b. Self-monitoring of symptoms and side effects;

c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Peer support specialist; or

(s) Targeted case management services which shall:

1. Include services to one (1) or more of the following target groups:

a. An adult or a child with substance use disorder;

b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

c. A child with a severe emotional disability; or

d. An adult with severe mental illness;

2. Be provided by a case manager as described in Section 4(6), (7), or (8) of this administrative regulation; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or

other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and

d. Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs.

Section 7. Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

(a) Describe the services to be provided to the client, including the frequency of services;

(b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

(c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

(d) Specify each staff member assigned to work with the client;

(e) Identify methods of involving the client's family or significant others if indicated;

(f) Specify criteria to be met for termination of treatment;

(g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and

(h) The date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b) The plan of care shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 8. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Screening information pertaining to the mental health or

substance use disorder;

(e) If applicable, a psychosocial history;

(f) If applicable, staff notes on services provided;

(g) If applicable, the client's plan of care;

(h) If applicable, disposition;

(i) If applicable, assigned status;

(j) If applicable, assigned therapists; and

(k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the behavioral health services organization from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 9. Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section 6 of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section 4(14) of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

- (g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;
 - (h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;
 - (i) Be treated with consideration, respect, and personal dignity;
 - (j) Review his or her client record in accordance with the organization's policy; and
 - (k) Receive one (1) free copy of his or her client record.
- (5) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:
- (a) Vote in a political election; and
 - (b) Reasonable accommodations to afford privacy in bathing and toileting.
- (6) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 10. Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section 11. License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 12. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", July 2014 edition, is incorporated by reference.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 25, 2014

FILED WITH LRC: July 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2014 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Mynear

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new health facility licensure category called "behavioral health services organizations".

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the minimum requirements for the licensure of behavioral health services organizations which provide behavioral health services to treat, support, and encourage individuals with a substance use disorder, mental health disorder, or co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(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 minimum licensure requirements necessary for the operation of behavioral health services organizations.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this new administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization. Upon approval of licensure, behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in applying for licensure as a behavioral health services organization will be required to comply with the licensure standards established in this new administrative regulation.

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

question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this new administrative regulation will be eligible to enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients. Additionally, the anticipated expansion in the number of behavioral health services providers ensures that Medicaid recipients will have access to Medicaid-covered services for the treatment of substance use disorders, mental health disorders, or co-occurring disorders.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from behavioral health services organizations and 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: As a new administrative regulation, the initial fee for licensure as a behavioral health services organization will be \$750, the annual renewal fee will be \$500, and the fee for each extension location will be \$250. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of \$100 will be charged for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of \$750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Under this new administrative regulation, clinical behavioral health services entities may apply for licensure as a behavioral health services organization.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Cabinet will collect an initial fee of \$750 from each applicant for licensure as a behavioral health services organization. The Cabinet anticipates fifty (50) to seventy-five (75) applicants during

the first year. Therefore, the Cabinet may collect between \$37,500 to \$56,250 in licensure fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet will collect an annual renewal fee of \$500 from each licensed behavioral health services organization. The Cabinet anticipates there will be approximately seventy-five (75) licensed behavioral health services organizations operating in subsequent years. Therefore, the Cabinet may collect approximately \$37,500 in licensure fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations, including initial and routine surveys conducted by at least one (1) nurse consultant inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating behavioral health services organizations on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(New Administrative Regulation)

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

RELATES TO: KRS 200.503(2), 210.005, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319C.010, 335.080, 335.100, 335.300, 335.500, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 216B.042

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, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units which serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in

accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3); or

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(3); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and which provides crisis services to no more than twelve (12) clients who require overnight stays.

(6) "Peer support specialist" means a paraprofessional who:

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of a:

1. Physician;

2. Psychiatrist;

3. Licensed psychologist;

4. Licensed psychological practitioner;

5. Licensed psychological associate;

6. Licensed clinical social worker;

7. Licensed marriage and family therapist;

8. Licensed professional clinical counselor;

9. Certified social worker;

10. Licensed marriage and family therapist associate;

11. Licensed professional counselor associate;

12. Licensed professional art therapist; or

13. Licensed professional art therapist associate.

(7) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(8) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

(a) Intoxication;

(b) Withdrawal; or

(c) A substance induced mental health disorder.

(9) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a residential crisis stabilization unit shall submit to the

Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3)(a) Name change. A residential crisis stabilization unit shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the unit's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operated until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the unit.

Section 3. Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.

Section 4. Accreditation. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by the:

(a) Joint Commission;

(b) Commission on Accreditation of Rehabilitation Facilities; or

(c) Council on Accreditation.

(2) The cabinet shall revoke the license if the residential crisis stabilization unit fails to become accredited in accordance with subsection (1) of this section or fails to maintain accreditation.

(3) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 5. Administration and Operation. The licensee shall be legally responsible for:

(1) The residential crisis stabilization unit;

(2) The establishment of administrative policy; and

(3) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 6. License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 7. Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:

(a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Violent crime as specified in KRS 439.3401;
3. Criminal offense against a minor as specified in KRS 17.500; or
4. Class A felony.

(2) Prior to initial hire, an out-of-state criminal background information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth.

(3) A residential crisis stabilization unit shall perform annual criminal record checks as described in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) A personnel record shall be kept on each staff member and shall contain the following items:

- (a) Name and address;
- (b) Verification of all training and experience, including licensure, certification, registration, or renewals;
- (c) Verification of submission to the background check required by subsection (1) of this section;
- (d) Performance appraisals conducted no less than annually; and
- (e) Employee incident reports.

Section 8. Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of each client.

(2) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

- (a) Discharge;
- (b) Transfer; or
- (c) Referral to another service provider, if appropriate.

Section 9. Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances which shall include the following:

(1) A process for filing a written client grievance;

(2) An appeals process with time frames for filing and responding to a grievance in writing;

(3) Protection for a client from interference, coercion, discrimination, or reprisal; and

(4) Conspicuous posting of the grievance procedures in a public area to inform a client of:

- (a) His or her right to file a grievance;
- (b) The process for filing a grievance; and
- (c) The address and telephone number of the cabinet's ombudsman.

Section 10. Services. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide the following services:

- (a) Screening;
- (b) Assessment;
- (c) Treatment planning;
- (d) Individual outpatient therapy;
- (e) Group outpatient therapy; and
- (f) Psychiatric services.

(2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:

- (a) Family therapy; or
- (b) Peer support by a peer support specialist.

(3)(a) The services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.

(b) The service identified in subsection (1)(a) of this section may be provided by a certified alcohol and drug counselor.

(c) A residential crisis stabilization unit shall have access to a

board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.

(d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.

(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:

(a) The programs shall not be located on the same campus; and

(b) The children's program shall serve clients:

1. Under the age of eighteen (18); or
2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

(a) Provide treatment for acute withdrawal, if appropriate;

(b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;

(c) Have written policies and procedures for:

1. Crisis intervention; and
2. Discharge planning which shall begin at the time of admission and aftercare planning processes;

(d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs which:

1. Address identified needs and achieve goals specified in the treatment plan; and

2. Help promote continuity of care after discharge;

(f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:

1. Every four (4) clients during normal waking hours; and
2. Every six (6) clients during normal sleeping hours;

(g) Ensure that administrative oversight of the unit is provided by a staff member who shall be a:

1. Behavioral health professional; or
2. Behavioral health professional under clinical supervision;

(h) Provide a training program for direct-care staff pertaining to:

1. The care of clients in a crisis stabilization unit;
2. Detection and reporting of abuse, neglect, or exploitation;
3. Emergency and safety procedures;
4. Behavior management, including de-escalation training;
5. Physical management procedures and techniques;
6. Suicide prevention and care; and
7. Trauma informed care; and

(i) Assure that each client shall be:

1. In need of short-term behavior management and at risk of placement in a higher level of care;

2. Able to take care of his or her own personal needs, if an adult;

3. Medically able to participate in services; and

4. Served in the least restrictive environment available in the community.

Section 11. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, date of birth, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent via signature of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring

used in treatment.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the residential crisis stabilization unit from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 12. Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities which shall be:

(a) Provided at the time of admission:

1. To the client; or

2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

(b) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read;

(c) Written in language that is understandable to the client;

(d) Conspicuously posted in a public area of the facility; and

(e) Cover the following:

1. The right to treatment, regardless of race, religion, or ethnicity;

2. The right to recognition and respect of personal dignity in the provision of all treatment and care;

3. The right to be provided treatment and care in the least restrictive environment possible;

4. The right to an individualized plan of care;

5. The right of the client, including the client's parents or guardian if the client is a minor, to participate in treatment planning;

6. The nature of care, procedures, and treatment provided;

7. The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;

8. The right to be free from verbal, sexual, physical, or mental abuse; and

9. The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

(2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of

care, including:

(a) Visitation by family or significant others in a suitable area of the facility; and

(b) Telephone communications with family or significant others at a reasonable frequency.

(3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor.

(b) Documentation shall be included in the client's record of any privacy limitation.

(4) Information shall be provided to the client, or the client's parent or guardian if the client is a minor, regarding the use and disposition of special observation and audio visual techniques, which may include the following:

(a) One (1) way vision mirror;

(b) Audio recording;

(c) Video tape recording;

(d) Television;

(e) Movie; or

(f) Photographs.

(5)(a) If the residential crisis stabilization unit serves children as described in Section 10(4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.

(b) Behavior management techniques shall be explained fully to each client and the client's parent, guardian, or other legal representative.

(c) The unit shall prohibit cruel and unusual disciplinary measures including the following:

1. Corporal punishment;

2. Forced physical exercise;

3. Forced fixed body positions;

4. Group punishment for individual actions;

5. Verbal abuse, ridicule, or humiliation;

6. Denial of three (3) balanced nutritional meals per day;

7. Denial of clothing, shelter, bedding, or personal hygiene needs;

8. Denial of access to educational services;

9. Denial of visitation, mail, or phone privileges for punishment;

10. Exclusion of the resident from entry to his or her assigned living unit; and

11. Restraint or seclusion as a punishment or employed for the convenience of staff.

(d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(6) If therapeutic holds are used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy which shall describe:

(a) Criteria for appropriate use of therapeutic holds;

(b) Documentation requirements; and

(c) The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities prior to using therapeutic holds.

Section 13. Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies which assure:

(a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and

(b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.

(2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally, and shall prevent further potential abuse while the investigation is in progress.

Section 14. Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a

licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

(2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.

(3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.

(4) A copy of the prescription shall be kept in the client record.

(5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.

(6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.

(7) Medication kept by the unit shall be properly labeled.

(8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.

(9) Medication kept in the unit shall be kept in a locked cabinet.

(10) A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).

(11) There shall be a controlled substances record, in which is recorded:

(a) The name of the client;

(b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;

(c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and

(d) The name of the nurse who administered it, or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 15. Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in a bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;

3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;

4. Be equipped with a support mechanism and a clean mattress; and

5. Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

(d) There shall be separate sleeping quarters for males and females.

(e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

(3) Bathrooms.

(a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):

1. Wash basin with hot and cold water;

2. Bath or shower with hot and cold water; and

3. Flush toilet.

(b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

(4) Living area.

(a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.

(b) Each living unit shall be equipped with a:

1. Working sink; and

2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

(5) There shall be adequate lighting, heating, heated water, and ventilation.

(6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.

(8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.

(9) The residential crisis stabilization unit shall establish an infection control system which includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section 16. Facility Specifications. (1) A residential crisis stabilization unit shall:

(a) Be of safe and substantial construction;

(b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;

(c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and

(d) Meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) A residential crisis stabilization unit shall:

(a) Have a written emergency plan and procedures for meeting potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 17. Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", July 2014 edition, is incorporated by reference.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 24, 2014

FILED WITH LRC: July 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 close of business September 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Maryellen B. Myneer,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new licensure category for "residential crisis stabilization units".

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the minimum requirements for the licensure of residential crisis stabilization units which are community-based programs that offer an array of services to stabilize a crisis and divert individuals from placement in a higher level of care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. Administration of the licensure function includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In addition, KRS 215B.042 authorizes the Cabinet to establish reasonable application fees for licenses.

(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 minimum licensure requirements necessary for the operation of residential crisis stabilization units.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Under this new administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

(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 interested in applying for licensure as a residential crisis stabilization unit will be required to comply with the licensure standards established in this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities licensed under this new administrative regulation will be subject to the licensure fees described in the response to question (7).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed under this new administrative regulation will be eligible to enroll in the Kentucky Medicaid Program. Additionally, residential crisis stabilization units help ensure that Medicaid recipients will have access to treatment needed to stabilize a child with a severe emotional disability, adult with severe mental illness, or individual with substance use disorder.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) OIG inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from residential crisis stabilization units and 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: As a new administrative regulation, the initial fee for licensure as a residential crisis stabilization unit will be \$750 and the annual renewal fee will be \$500. A processing fee of twenty-five (25) dollars will be charged for a change of name and a fee of \$100 will be charged for a change of location. A change of ownership must be documented on a new licensure application and submission of an accompanying fee of \$750.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation establishes licensure fees as described in the response to question (7).

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Under this new administrative regulation, entities may apply for licensure as a residential crisis stabilization unit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Cabinet will collect an initial fee of \$750 from each applicant for licensure as a residential crisis stabilization unit.

(b) How 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 Cabinet will collect an annual renewal fee of \$500 from each licensed residential crisis stabilization unit.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable because the licensure fee is anticipated to cover the cost of regulating residential crisis stabilization units, including initial and routine surveys conducted by at least one (1) inspector, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating residential crisis

stabilization units on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 8, 2014

Call to Order and Roll Call

The July 2014 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 8, 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 June 2014 meeting were approved.

Present were:

Members: Senators Perry Clark, Ernie Harris, and Alice Forgy Kler; and Representatives Robert Damron, Jimmie Lee, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Emily Harkenrider, Karen Howard, Ange Bertholf, and Betsy Cupp.

Guests: Alicia Sneed, Education Professional Standards Board; David Beyer, Jason Ford, Board of Dentistry; Ron Brooks, David Wicker, Department of Fish and Wildlife Resources; Amber Arnett, Department of Corrections; Kevin Brown, Amanda Ellis, David Wickersham, Department of Education; Mike Pettit, Chuck Stribling, Labor Cabinet; Trey Hieneman, Department of Alcoholic Beverage Control; Russell Coy, DJ Wasson, Department of Insurance; Elizabeth Caywood, Jason Dunn, Jennie Willson, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, July 8, 2014, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Certification Procedures

16 KAR 4:060. Certificate renewals and teaching experience. Alicia Sneed, director of legal services, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:550. Anesthesia and sedation. David Beyer, executive director, and Jason Ford, DMD, MD, president, represented the board.

In response to questions by Co-Chair Harris, Mr. Beyer stated that this administrative regulation was being amended to clarify the distinction between "administration" and "delivery" of nitrous oxide. Dr. Ford stated that a dental hygienist may "administer" nitrous oxide that may include titration, while a dental assistant shall only "deliver" nitrous oxide that was already prepared. Nitrous oxide was administered through a mask.

201 KAR 8:571. Registration of dental assistants.

A motion was made and seconded to approve the following amendment: to amend Section 7 to revise the Delegated Duty List incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

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

301 KAR 1:201. Taking of fish by traditional fishing methods. Ron Brooks, fisheries director, and David Wicker, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex. Amber Arnett, staff attorney, represented the department.

In response to a question by Co-Chair Harris, Ms. Arnett stated that this administrative regulation was being amended as part of the regular review process. There had not been a particular incident or problem that precipitated the revision.

A motion was made and seconded to approve the following amendments: (1) to amend RCC 12-01-02 to clarify which items of furniture are assigned to an inmate and the rules for where those and other items can be placed; (2) to amend RCC 12-01-03 to clarify housekeeping rules for inmates working at night; (3) to amend RCC 10-01-02, 11-04-01, 13-16-01, 20-01-03, and 25-05-01 to make minor technical corrections; and (4) to amend Section 1 to change the edition dates for the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:346. Repeal of 704 KAR 3:345. Kevin Brown, associate commissioner and general counsel; Dr. Amanda Ellis, associate commissioner; and David Wickersham, assistant general counsel, represented the department.

704 KAR 3:370. Professional Growth and Effectiveness System.

In response to questions by Co-Chair Harris, Mr. Brown stated that House Bill 180 of the 2013 Regular Session of the General Assembly established the statutory framework for the Professional Growth and Effectiveness System. Dr. Ellis stated that the prior evaluation system was vague and did not emphasize teacher growth and effectiveness. This system was more rigorous and comprehensive. Mr. Brown stated that a steering committee that included legislators met on these requirements for several years prior to House Bill 180 of the 2013 Regular Session of the General Assembly. Dr. Ellis stated that this system was used for teachers from preschool to high school and included all associated school leaders. This system established a standard, statewide framework to be administered by local school districts. The Education Professional Standards Board and universities were involved with the development to better prepare new teachers for this system. The Teacher Internship Program was integrated with the Professional Growth and Effectiveness System in an additional effort to prepare new teachers for the rigors of the system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, 5, 6, 7, 10, 11, 13, 14, 18, 19 and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the material incorporated by reference to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

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

803 KAR 2:300. General. Mike Pettit, safety standards specialist, and Chuck Stribling, federal – state coordinator, represented the division.

In response to questions by Co-Chair Harris, Mr. Stribling stated that these administrative regulations basically incorporated the changes that had occurred in the federal program. The agency did not receive public comments, and by the time the revisions reached the state level, the federal comment opportunities were fairly exhaustive. The main change pertained to power generation and distribution. Enforcement was somewhat delayed in order to

ensure adequate time to comply. Most work was at the industrial level.

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.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add a federal citation; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:412. Fall protection.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:100. General advertising practices. Trey Hieneman, legislative liaison, represented the department.

In response to a question by Co-Chair Harris, Mr. Hieneman stated that this administrative regulation prohibited a wholesaler from advertising the name of a retailer of the product. A retailer was not prohibited from advertising the name of the wholesaler.

In response to a question by Representative Damron, Mr. Hieneman stated that this administrative regulation did not apply to small farm wineries.

Department of Insurance: Financial Standards and Examination Division: Health Maintenance Organizations

806 KAR 38:100. Risk-based capital for health organizations. Russell Coy, insurance program manager, and DJ Wasson, administrative coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the

NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 6, 8, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: 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. Elizabeth Caywood, internal policy analyst, and Jason Dunn, director, represented the division.

A motion was made and seconded to amend Sections 1, 4, 12, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

Supplemental Nutrition Assistance Program

921 KAR 3:030. Application process.

In response to a question by Co-Chair Harris, Ms. Caywood stated that the division was statutorily required to serve as a voter registration site.

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

In response to a question by Co-Chair Harris, Mr. Dunn stated that states had previously been exempt from fully implementing this program due to the economic downturn. Services included things such as transportation and child care assistance.

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

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

921 KAR 3:070. Fair hearings.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 8, 12, 16, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commissioner's Office: Child Welfare

922 KAR 1:320. Service appeals. Elizabeth Caywood, internal policy analyst, represented the commissioner's office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to update citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Protection and Permanency: Child Welfare

922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

In response to a question by Senator Clark, Ms. Caywood stated that this administrative regulation was being amended to delete language that was already established by statute. The statutory language allowed hearsay in an administrative hearing.

Other Business: A motion was made by Representative Lee and seconded by Representative Turner to nominate Representative Mary Lou Marzian as House Co-Chair of the Subcommittee and to cease nominations. The motion was approved, and Representative Marzian was approved as House Co-Chair. The Subcommittee welcomed her.

VOLUME 41, NUMBER 2 – AUGUST 1, 2014

The following administrative regulations were deferred to the August 2014, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: 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.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Maternal and Child Health: Kentucky Early Intervention System

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

Controlled Substances

902 KAR 55:090. Exempt anabolic steroid products.

Department for Medicaid Services: Division of Policy and Operations: Hospital Service Coverage and Reimbursement

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

The Subcommittee adjourned at 1:40 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 TRANSPORTATION
Meeting of July 1, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of July 1, 2014, having been referred to the Committee on June 4, 2014, pursuant to KRS 13A.290(6):

601 KAR 1:230
600 KAR 6:040

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 July 1, 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 July 16, 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 July 16, 2014, having been referred to the Committee on July 3, 2014, pursuant to KRS 13A.290(6):

201 KAR 20:057

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 16, 2014 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

B - 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

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The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 41 of the *Administrative Register of Kentucky*.

Technical Amendment Index

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 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

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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.

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VOLUME 40

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.

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn before being printed in Register
- **** Emergency expired after 180 days
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

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SYMBOL KEY:

* Statement of Consideration not filed by deadline

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*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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