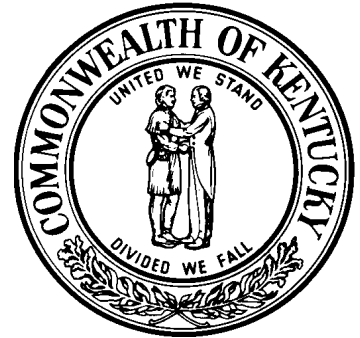


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 3
MONDAY, SEPTEMBER 1, 2014

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet September 12, 2014, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 363-365 of this Administrative Register.

MEETING NOTICE: EAARS

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet at 1:00 p.m., Monday, October 6, 2014, in room 154, Capitol Annex, Frankfort, Kentucky.

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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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, September 12, 2014, at 1:00 p.m., Room 149 Capitol Annex**

EDUCATION PROFESSIONAL STANDARDS BOARD

Alternative Routes to Certification

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

**GENERAL GOVERNMENT CABINET
Board of Pharmacy**

Board

201 KAR 2:030. License transfer.

201 KAR 2:040. Registration of pharmacist interns.

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)

Board of Embalmers and Funeral Directors

Board

201 KAR 15:015. Per diem compensation of board members.

Board of Licensed Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:070. Education and examination requirements.

201 KAR 36:080. Inactive and retired licensure status.

Board of Prosthetics, Orthotics, and Pedorthics

Board

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter.

201 KAR 44:110. Licensure by endorsement.

201 KAR 44:120. Post residency registration.

**DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health**

Livestock Sanitation

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

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

Public Water Supply

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:300. Lead and copper.

401 KAR 8:700. Bottled water.

**Department for Natural Resources
Office of the Reclamation Guaranty Fund**

Bond and Insurance Requirements

405 KAR 10:025 & E. Extension of performance bond subsidization. ("E" expires 12/27/2014)

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

Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

Kentucky Law Enforcement Council

Council

503 KAR 1:060. Definitions for 503 KAR Chapter 1.

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

Department of Juvenile Justice

Child Welfare

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures: program services. (Amended After Comments)

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing**

Commercial Driver's License

601 KAR 11:030. Restrictions and endorsements on commercial driver's licenses.

Kentucky Bicycle and Bikeways Commission

Motorcycle and Bicycle Safety

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

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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)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Commission on Proprietary Education

Commission

- 791 KAR 1:010. Applications, permits and renewals. (Not Amended After Comments)
- 791 KAR 1:020. Standards for licensure. (Not Amended After Comments)
- 791 KAR 1:025. Fees. (Amended After Comments)
- 791 KAR 1:030. Procedures for hearings. (Not Amended After Comments)
- 791 KAR 1:035. Student protection fund. (Deferred from August)
- 791 KAR 1:050. Application for license for commercial driver license training school. (Deferred from August)
- 791 KAR 1:060. Application for renewal of license for commercial driver license training school. (Deferred from August)
- 791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures. (Deferred from August)
- 791 KAR 1:091. Repeal of 791 KAR 1:090. (Deferred from August)

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

Licensing

- 804 KAR 4:230 & E. Extended hours supplemental licenses. ("E" expires 1/11/2015)
- 804 KAR 4:351. Repeal of 804 KAR 4:070, 804 KAR 4:350, and 804 KAR 4:420.
- 804 KAR 4:400 & E. ABC basic application and renewal form incorporated by reference. ("E" expires 1/11/2015)
- 804 KAR 4:410 & E. Special applications and registration forms incorporated by reference. ("E" expires 1/11/2015)

Malt Beverages and Wine

- 804 KAR 14:010. Malt beverage and wine for personal use.

ENERGY AND ENVIRONMENT CABINET Public Service Commission

Utilities

- 807 KAR 5:001. Rules of procedure. (Amended After Comments)
- 807 KAR 5:011. Tariffs. (Not Amended After Comments)
- 807 KAR 5:068. Purchased water adjustment for water districts and water associations. (Comments Received)
- 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. (Deferred from August)
- 807 KAR 5:075. Treated sewage adjustment for water districts and water associations. (Comments Received)
- 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (Comments Received)

State Board on Electric Generation and Transmission Siting

Utilities

- 807 KAR 5:110. Board proceedings. (Not Amended After Comments)

Public Service Commission

Utilities

- 807 KAR 5:120. Applications for certificate of public convenience and necessity for certain electric transmission lines. (Deferred from August)

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)

Office of Inspector General Division of Health Care

Health Services and Facilities

- 902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations. ("E" expires 1/11/2015)
- 902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. ("E" expires 1/11/2015)

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)
- 902 KAR 30:110. Point of Entry and service coordination. (Not Amended After Comments)
- 902 KAR 30:120. Evaluation and eligibility. (Not Amended After Comments)
- 902 KAR 30:130. Assessment, service planning, and assistive technology. (Not Amended After Comments)
- 902 KAR 30:150. Personnel qualifications. (Comments Received, SOC ext)
- 902 KAR 30:160. Covered services. (Not Amended After Comments)
- 902 KAR 30:180. Procedural safeguards. (Comments Received, SOC ext)
- 902 KAR 30:200. Coverage and payment for services. (Not Amended After Comments)

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

Medicaid Services

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

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. (Comments Received)

REMOVED FROM SEPTEMBER AGENDA

CABINET FOR HEALTH AND FAMILY SERVICES

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

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. (Comments Received, SOC ext.)

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

Supplemental Nutrition Assistance Program

921 KAR 3:035. Certification process. (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
31 KAR 4:130E

Nature of the emergency: This emergency amended administrative regulation is being promulgated to implement KRS 117A.030(4), which requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A; KRS 117A.030(5), which requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth; and KRS 117A.030(6), which requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.030 became effective July 1, 2014. There is a general election scheduled to be held in Kentucky on November 4, 2014. There may also be local option elections scheduled before November 4, 2014. Registration is currently open, and the deadline to register to vote in the November 4, 2014, general election is October 6, 2014. This emergency regulation needs to become effective immediately to protect the voting rights of covered voters who apply for, receive, and return military-overseas ballots pending enactment of an ordinary amended administrative regulation. The reasons why an ordinary administrative regulation is not sufficient: An ordinary amended administrative regulation is not sufficient because it will not implement KRS 117A.030 for the purpose of military-overseas ballots that are requested by and transmitted to and from covered voters pending enactment of an ordinary amended administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ALISON LUNDERGAN GRIMES, Chair

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:130E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically [Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens].

RELATES TO: KRS[116.045, 116.0452, 117.079,] 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130[42—U.S.C. 1973ff], 42 U.S.C. 1973ff-1

STATUTORY AUTHORITY: KRS[116.045(4)(e),] 117.079, 117.086(1), 117A.030(2), (4)-(6), 42 U.S.C.[1973ff,] 1973ff-1

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for

the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130[KRS 117.079 requires the State Board of Elections to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. 42 U.S.C. 1973ff-1 provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one (1) means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the

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Federal Post Card Application and transmitting the blank absentee ballot by facsimile].

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Application" means the Federal Post Card Application, Standard Form 76. (2) "Instructions to Voter" means the Instructions for Voting to a Covered Voter [Qualified Kentucky Resident] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot [Emailed an Absentee Ballot], SBE 46A (Rev. July 2014).

(4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5) (3) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically. (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

(a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;

(b) Complete the county clerk's portion of the Instructions to Voter;

(c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and

(d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

(1) If the covered voter requires assistance in voting, the covered voter and the person who assisted the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";

(2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;

(3) The covered voter shall complete and sign the Voter Verification and Declaration;

(4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;

(5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;

(6) The covered voter shall sign across the back flap of the outer envelope;

(7) The covered voter shall print "Absentee Ballot" on the front

of the outer envelope, without obstructing the address area; and

(8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received [Who May Request Federal Post Card Application by Facsimile. (1) Any resident of Kentucky may transmit a request for an application to the office of the

county clerk of the county where the applicant resides via facsimile if the applicant meets one (1) of the following criteria:

(a) Is a member of the Armed Forces;

(b) Is a dependent of a member of the Armed Forces; or

(c) Is a citizen residing overseas.

(2) If the applicant desires to have the application faxed, the applicant shall indicate this and the appropriate facsimile number on the request.

Section 3. Requests for Applications.

(1) Upon receiving a request for an application by facsimile from or on behalf of a person who meets the requirements listed in Section 2(1), a county clerk shall complete the transmission sheet and the county clerk's portion of the application. The county clerk shall then do one (1) of the following:

(a) Transmit the transmission sheet and the application to the Federal Voting Assistance Program at one (1) of the numbers listed on the transmission sheet; or

(b) Transmit the transmission sheet and the application to the voter at the facsimile number provided by the voter on the absentee ballot application.

(2) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the application to the applicant via facsimile.

(3) If the applicant does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile.

(1) The county clerk shall accept any properly completed Federal Post Card Application by facsimile for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any person who fulfills the eligibility requirements listed in Section 2(1) of this administrative regulation.

(2) The county clerk shall accept a properly completed application for voter registration when consistent with the timelines established by KRS 116.0452.

(3) If an application for an absentee ballot is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application for an absentee ballot is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the application, in accordance with KRS 117.085(1)(b).

(4) The county clerk shall verify the applicant's eligibility. If the applicant is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original blank absentee ballot.

(5) The county clerk shall mark the original blank absentee ballot "Faxed to (Military or Overseas) Voter" and the ballot shall be retained. The original blank absentee ballot shall not be reused.

(6) The county clerk shall complete a transmission sheet, the county clerk's portion of the voter verification sheet, and the instructions to voter sheet. The faxable copy of the original blank absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet, and the transmission sheet to one (1) of the Federal Voting Assistance

~~Program facsimile numbers listed on the transmission sheet or directly to the facsimile number provided by the voter.~~

~~(7) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the documents to the voter via facsimile.~~

~~(8) If the county clerk receives a faxed application that does not clearly indicate whether the ballot is to be transmitted by mail or by facsimile, the county clerk shall transmit the blank absentee ballot by U.S. mail.~~

~~Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile.~~

~~(1) When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet.~~

~~(2) If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.~~

~~(3) The voter shall:~~

~~(a) Print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet;~~

~~(b) Seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope;~~

~~(c) Place the voter's signature across the back flap of the outer envelope;~~

~~(d) Print "Absentee Ballot" on the front of the outer envelope without obstructing the address area; and~~

~~(e) Mail the envelope to the address for the county clerk located on the voter instruction sheet.~~

~~(4) The absentee ballot shall be received by the county clerk through U.S. mail by the time established by the general election laws for the closing of the polls in accordance with KRS 117.086(1) in order to be counted.~~

Section 5[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Official Elections Material – Electronic Transmission Sheet";

(c) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(d) "Instructions for Voting to a Covered Voter[Qualified Kentucky Resident] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot[Emailed an Absentee Ballot]", SBE 46A, rev. July 2014;

(b) "Voter Assistance Form", SBE 31, 02/06; and

(c) [June 2010; and (e)] "Voter Verification and Declaration[Sheet]", SBE 46B, rev. July 2014[June 2010].

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f)

requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement 42 U.S.C. 1973ff-1(a-f) and KRS 117A.030(4)-(6), and 117A.130 .

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to

send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation conforms to the content of the authorizing statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, establishing the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporating by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implementing the electronic free-access system pursuant to KRS 117A.130.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS

117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation assists in the effective administration of the statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010 and establishing the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporating by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implementing the electronic free-access system pursuant to KRS 117A.130.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified or vitiated by statute and establishing procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically that are consistent with KRS Chapter 117A. The materials incorporated by reference have been amended to reflect the changes to procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically and to implement the declaration to be used by covered voters pursuant to KRS 117A.030(6).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to amendments to existing statutes and newly enacted statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute, establishing procedures for the county clerk to follow and materials for the county clerk to use when transmitting a military-overseas ballot via facsimile or electronically that are consistent with KRS Chapter 117A, and establishing procedures for

a covered voter to follow and materials for a covered voter to use, including the declaration required by KRS 117A.030(6), when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically that are consistent with KRS Chapter 117A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically that are consistent with KRS Chapter 117A and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically and by incorporating by reference standardized absentee-voting materials and a declaration to be used by covered voters.

(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 county clerks and an unknown number of covered voters.

(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: County clerks will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for transmitting military-overseas ballots via facsimile or electronically. Covered voters are not required to take any action to comply with this amended administrative regulation but will have the opportunity to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, covered voters will have the opportunity to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted. County clerks have an interest in ensuring that all eligible Kentuckians are able to exercise their rights to register to vote and vote in all elections, and compliance with this administrative regulation furthers that interest by enabling covered voters to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted.

(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 Board of Elections' budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 117A.020, 117A.030, 117A.070, 117A.080, 117A.120

(3) Minimum or uniform standards contained in federal mandate:

42 U.S.C. 1973ff-1(a)(4) requires states to use the official post card form prescribed under 42 U.S.C. 1973ff for simultaneous voter registration application and absentee ballot application. 42 U.S.C. 1973ff-1(a)(5) requires states that require an oath or affirmation to accompany any document under that subchapter to use the standard oath prescribed under 42 U.S.C. 1973ff(b)(7). 42 U.S.C. 1973ff-1(a)(7) requires states to, in addition to any other method for transmitting blank absentee ballots in the state, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary and runoff elections for Federal office. 42 U.S.C. 1973ff-1(e) requires states to designate not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate. However, the state compliance standards do impose additional requirements to the federal mandate. Pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters. Pursuant to KRS 117A.080, more voters than required by the federal mandate may use the federally mandated procedures.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.079, 117.086(1), and 117A.030(2), (4)-(6), and 42 U.S.C. 1973ff-1.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments to administer this program for the subsequent years.

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

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

STATEMENT OF EMERGENCY
31 KAR 4:140E

Nature of the emergency: This emergency amended administrative regulation is being promulgated because the existing administrative regulation and material incorporated by reference are inconsistent with Chapter 117A and related administrative regulations. KRS Chapter 117A became effective July 1, 2014, and this emergency regulation needs to become effective immediately to protect the voting rights of covered voters who submit a federal postcard application via electronic mail pending enactment of the ordinary amended administrative regulation. The reasons why an ordinary administrative regulation is not sufficient: An ordinary amended administrative regulation is not sufficient because it will not resolve inconsistencies between the existing administrative regulation and material incorporated by reference and KRS Chapter 117A, which became effective July 1, 2014, and related administrative regulations for the purpose of federal postcard applications submitted by covered voters via electronic mail pending enactment of an ordinary amended administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ALISON LUNDERGAN GRIMES, Chair

KENTUCKY STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:140E. Submission of the federal postcard application via electronic mail[Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens].

RELATES TO: KRS 116.045(4)(e)[116.995], 117.079, 117.085, 117A.050(3), 117A.060(3), 42 U.S.C. 1973ff-1[117.995, 119.265, 369.107, 42 U.S.C. 1973]

STATUTORY AUTHORITY: KRS 116.045(4)(e),[117.015(1)(a),] 117.079, 117.086(1), 42 U.S.C. 1973ff-1

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail[KRS 117.079 requires

the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically].

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5) ["Absentee ballot application" means the Federal Post Card Application, Standard Form 76, electronically sent to the county clerk.

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA and MOVE.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot," SBE 46A.

(4) "MOVE" means the Military and Overseas Citizen Empowerment Act, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1.

(5) "Registered voter" means a resident of Kentucky who is eligible to vote and is a:

(a) Military personnel;

(b) Dependent of a member of the Military; or

(c) Other resident of Kentucky residing outside the United States.

(6) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet.

(7) "UOCAVA" means the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

(8) "Voter verification sheet" means the SBE 46B, the form the registered voter signs and includes the voter assistance oath].

Section 2. County Clerk's Electronic Mailing Address.[(1) A county clerk that has online capabilities shall follow the process established by this administrative regulation in administering UOCAVA and MOVE for the electronic transmission of Federal Post Card Applications, absentee ballot requests, and blank absentee ballots.

(2) The county clerk shall use the county clerk's electronic mailing address provided or recognized by the Kentucky Department of Transportation to send to and receive from covered voters voter registration applications, military-overseas ballot applications, military-overseas ballots, and related voting, balloting, and election information[receive a voter's Federal Post Card Application, to send a blank absentee ballot, and to send election related materials.

(3) The county clerk shall accept any properly completed Federal Post Card Application received electronically for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any registered voter as defined by this administrative regulation].

Section 3. Federal Postcard Applications Submitted Via Electronic Mail. (1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

(2) The county clerk shall treat a federal postcard application submitted by a covered voter via electronic mail in the same manner as a federal postcard application submitted via the electronic transmission system established under KRS 117A.030(4)[Processing a Completed Application electronically.

(1) If the county clerk receives notification of a voter's absentee ballot application electronically less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the county clerk receives notification of a voter's completed absentee ballot application electronically not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare a PDF copy of the original blank absentee ballot. The original blank absentee ballot shall then be marked "Emailed to (Military or Overseas) Voter" and retained.

(4) The original blank absentee ballot shall not be reused. The electronic copy of the original blank absentee ballot shall be sent electronically to the voter, along with the transmission sheet, Instructions to voter sheet, and the voter verification sheet, to either the FVAP Electronic Transmission Service at the email address listed on the transmission sheet or directly to the voter at the email address provided on the voter's absentee ballot application.

Section 4. Voter's Instructions on Completing an Absentee Ballot Received Electronically.

(1) When a voter receives an absentee ballot electronically from the county clerk, the voter shall print the absentee ballot, mark the absentee ballot, and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope without obstructing the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day, to the county clerk through the mail in order to be counted.

Section 5. Military and Overseas Voter Free Access System.

(1) The voter may determine the date the county clerk delivered the blank absentee ballot to the voter and the date the voter's voted ballot was received by the county clerk by utilizing the Absentee Ballot Status Inquiry System on the State board of Elections' Web site, <http://www.elect.ky.gov/>.

(2) The county clerk shall participate in the free access system developed by the State Board of Elections or create a similar system on the local level by which the requirements of 42 U.S.C. 1973ff-1(h) are fulfilled.

Section 6. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Federal Post Card Application", Standard Form 76A (Rev.

10-2005);

(c) "Official Elections Material—Electronic Transmission Sheet";
(d) "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot", SBE 46A, June 2010; and

(e) "Voter Verification Sheet", SBE 46B, June 2010.

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation authorizes covered voters to submit a federal postcard application via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement 42 U.S.C. 1973ff-1(a-f) and KRS 116.045(4)(e).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation conforms to the

content of the authorizing statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation assists in the effective administration of the statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified, vitiated by statute, or included in other administrative regulations; establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations; and deleting material incorporated by reference that has been defined by statute or incorporated into other administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to amendments to existing statutes and administrative regulations and newly enacted statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute or included in other administrative regulations, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect county clerks and covered voters.

(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: County clerks will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for receiving and processing federal postcard applications submitted by covered voters via electronic mail. Covered voters are not required to take any action to comply with this amended administrative regulation.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): County clerks have an interest in ensuring that all eligible Kentuckians are able to exercise their right to register to vote and to vote in all elections, and compliance with this administrative regulation furthers that interest by establishing the procedures for county clerks to follow when a federal postcard application is submitted via electronic mail.

(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 Board of Elections' budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 116.045(4)(e), 117A.050(3), 117A.060(3)

(3) Minimum or uniform standards contained in federal mandate: 42 U.S.C. 1973ff-1(a)(4) requires states to use the official post card form prescribed under 42 U.S.C. 1973ff for simultaneous voter registration application and absentee ballot application. 42 U.S.C. 1973ff-1(a)(7) requires states to, in addition to any other method for transmitting blank absentee ballots in the state, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary and runoff elections for Federal office. 42 U.S.C. 1973ff-1(e) requires states to designate not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate. However, the state compliance standards do impose additional requirements to the federal mandate. Pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school

board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters. Pursuant to KRS 117A.050(3) and 117A.060(3), the federally mandated procedures are available to more voters than required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 116.045(4)(3), and 117.079, 117.086(1) and 42 U.S.C. 1973ff-1.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments to administer this program for the subsequent years.

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

Revenues(+/-):

Expenditures(+/-):

Other Explanation (+/-):

STATEMENT OF EMERGENCY

31 KAR 5:010E

Nature of the emergency: This emergency amended administrative regulation is being promulgated to implement KRS 117A.050(2), which provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045; KRS 117A.060(4), which provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election; KRS 117A.100, which provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020; and KRS 117A.160(1), which establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.050, 117.060, 117A.100, and KRS 117A.160 became effective July 1, 2014, and the existing regulation is inconsistent with those statutes. There is a general election scheduled to be held in Kentucky on November 4, 2014. There may also be local option elections scheduled before the November 4, 2014, general election. Registration is currently open, and the

deadline to register to vote in the November 4, 2014, general election is October 6, 2014. This emergency regulation needs to become effective immediately to protect the rights of covered voters to use the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, and vote for all offices and ballot measures in an election described in KRS 117A.020 pending enactment of an ordinary amended administrative regulation. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient because the existing administrative regulation is inconsistent with KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160(1), which became effective July 1, 2014, and an ordinary amended administrative regulation will not resolve those inconsistencies and establish procedures for county clerks to follow when they receive a federal write-in absentee ballot submitted for the purpose of applying to register to vote, applying for a military-overseas ballot, or voting for all offices and ballot measures in an election described in KRS 117A.020 pending enactment of the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

ALISON LUNDERGAN GRIMES, Chair

KENTUCKY STATE BOARD OF ELECTIONS (Emergency Amendment)

31 KAR 5:010E. Use of the federal write-in absentee ballot[in elections for federal office].

RELATES TO: KRS 117.079, 117A.050(2), 117A.060(3), 117A.100, 117A.130, 117A.160(1), 42 U.S.C. 1973ff-1 [447-085, 42 U.S.C. 1973ff-2, 42 U.S.C. 1973ff-6]

STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), 42 U.S.C. 1973ff-1 [42 U.S.C. 1973ff-2]

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free

access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130[KRS 117.079 requires the State Board of Elections to promulgate administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. This administrative regulation establishes the requirements and procedures for absentee voting in a runoff primary election for residents of Kentucky residing outside of the United States and Kentucky residents who are military personnel serving on active duty outside of the United States to cast a ballot by use of the Federal Write-in Absentee Ballot].

Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

(2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. Definition of a Vote for Federal Write-in Absentee Ballots. The requirements of 31 KAR 6:030, Section 5(2)(a) and Section 6(1), (2), and (9), shall be suspended for the purposes of this administrative regulation.

Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal write-in absentee ballot, the county clerk shall:

(1) Not open the inner security envelope;

(2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;

(3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;

(4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and

(5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(6).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot.

(1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(6) and not be opened until after the deadline for receipt of the state absentee ballot.

(2) If the county clerk receives no later than the deadline for receipt of the state absentee ballot a valid and voted state absentee ballot from a covered voter from whom the county clerk also receives a federal write-in absentee ballot, the county clerk shall not unseal the inner security envelope containing the federal write-in absentee ballot and shall write on the inner security envelope containing the federal write-in absentee ballot, "Cancelled because state absentee ballot received."

Section 5. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received["Absent voter" means a resident of Kentucky who is eligible and registered to vote and is an:

(a) "Absent uniformed services voter" as defined by 42 U.S.C. 1973 ff-6(1); or

(b) "Overseas voter" as defined by 42 U.S.C. 1973ff-6(5).

(2) "FWAB" means the Federal Write-in Absentee Ballot developed by the Federal Voting Assistance Program.

Section 2. Any absent voter may cast a ballot by use of the FWAB in any primary, regular, or special election for federal office as long as the voter has made or attempts to make timely application for, and does not receive the state absentee ballot in time to cast a ballot for the election. Any county board of elections that receives a voted FWAB shall assume that the absent voter has made or attempted to make timely application for a state absentee ballot.

Section 3. When to count the FWAB.

(1) A FWAB received by the county board of elections from an absent uniformed services voter shall not be counted if the FWAB is submitted from within the voter's county of residence.

(2) A FWAB received by the county board of elections from an overseas voter shall not be counted if the ballot is submitted from any location in the United States.

Section 4. Completing the FWAB. (1) In completing the FWAB:

(a) The absent voter may designate a candidate in the following ways:

1. In a primary, by writing in the name of the candidate; or

2. In a general election, by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.

(b) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate named.

(c) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.

(d) The requirements of 31 KAR 6:030 shall be suspended for the purposes of this administrative regulation.

(2) The Federal Write-In Absentee Ballot shall not be used for purposes of voter registration or to request an absentee ballot.

Section 5. Receipt Of State Ballot Overrides FWAB. (1) An absent voter who submits a FWAB and subsequently receives a state absentee ballot may submit the state absentee ballot.

(2) The county board of elections shall not unseal or count the FWAB if the county clerk receives a valid and voted state ballot by 6:00 p.m., prevailing time, on election day.

(3) The county clerk shall mark on the outer envelope of the sealed FWAB the words, Cancelled because state ballot received.

Section 6. Prohibiting Refusal To Accept Ballot For Failure To Meet Certain Requirements. A county board of elections shall not refuse to accept and process any otherwise valid FWAB submitted in any manner by an absent voter solely on the basis of the following:

(1) Notarization requirements;

(2) Restrictions on paper type, including weight and size; and

(3) Restrictions on envelope type, including weight and size.

Section 7. Incorporation by Reference. (1) "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference.

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement KRS 117A.050(2), 117A.060(4), 117A.100, 117A.130, 117A.160, and 42 U.S.C. 1973ff-1(a)(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's

military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation assists in the effective administration of the statutes by establishing the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implementing the electronic free-access system pursuant to KRS 117A.130.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified or vitiated by statute and conforming to KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment also changes the existing administrative regulation by deleting the material incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the existing administrative regulation is inconsistent with KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 and to establish procedures

for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment is also necessary to delete the material incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute and conforming to KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by making the administrative regulation consistent with KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment will also assist in the effective administration of the statutes by deleting the material incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(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 county clerks, county boards of elections, and an unknown number of covered voters.

(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: County clerks and county boards of elections will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for processing federal write-in absentee ballots. Covered voters are not required to take any action to comply with this amended administrative regulation but will have the opportunity to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot and to use a federal write-in absentee ballot to vote in elections under KRS 117A.020.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, covered voters will have the opportunity to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot and to use the federal write-in absentee ballot to vote in elections under KRS 117A.020. County clerks and county boards of elections have an interest in ensuring that all eligible Kentuckians are able to exercise their right to register to vote and to vote in all elections, and compliance with this administrative regulation furthers that interest by enabling covered voters to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot.

(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 Board of Elections' budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 117A.050(2), 117A.060(4), 117A.100, 117A.160.

(3) Minimum or uniform standards contained in federal mandate: 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed services voters and overseas voters to use federal write-in absentee ballots in general elections for federal office.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate by permitting. However, the state compliance standards do impose additional requirements to the federal mandate by permitting covered voters to use the federal write-in absentee ballot for more purposes than required by the federal mandate. Pursuant to KRS 117A.050(2), more voters than required by the federal mandate may use the declaration accompanying a federal write-in absentee ballot to register to vote simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. Pursuant to KRS 117A.060(4), more voters than required by the federal mandate may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. And pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.079, 117A.030(2), and 42 U.S.C. 1973ff-1.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments 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 (+/-):

STATEMENT OF EMERGENCY 405 KAR 8:030E

Current administrative regulations related to co-tenancy in severed estates has become subject of litigation which calls into question the clarity of the Commonwealth's position on the issue related to surface mining. A recent court ruling found permits issued by the cabinet, in which there has been a complete severance of the ownership of the mineral rights from the ownership of the surface to be disturbed, to be invalid because applicants did not obtain the consent of all the cotenants. The Cabinet believes an amendment to existing administrative regulations is needed to provide additional detail to add clarity to the language and provide a clear understanding of the issues related to co-tenancy on severed estates. This emergency regulation is necessary to immediately amend the cabinet's administrative regulations that deal with this confusing issue which could result in delayed permit issuance and ultimately a loss of state revenue. 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 Division of Mine Permits (Emergency Amendment)

405 KAR 8:030E. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

EFFECTIVE: August 6, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine

Safety and Health Administration (MSHA):

(1) A copy of the final approved design plans for impounding structures;

(2) A copy of all correspondence with MSHA;

(3) A copy of technical support documents requested by MSHA;

(4) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined;

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

(6) The names and addresses of the owners of record of all

surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation

order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;~~[or]~~

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes~~[a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods].~~

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR

24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that

protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum

immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1)

of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the

adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (a) The type of mining method used;
- (b) The coal seams or other mineral strata mined;
- (c) The extent of coal or other minerals removed;
- (d) The approximate dates of past mining; and
- (e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land

use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of

the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron,

manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by

the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface

water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and

Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the 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: August 5, 2014

FILED WITH LRC: August 6, 2014 at 9 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the grant of a surface coal mining permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant surface mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for surface mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The nature of the dispute will ultimately determine

the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

(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 Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general 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 request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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.

(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.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060(3)(d).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

STATEMENT OF EMERGENCY 405 KAR 8:040E

Current administrative regulations related to co-tenancy in severed estates has become subject to litigation which calls into question the clarity of the Commonwealth's position on the issue related to underground mining. A recent court ruling found permits issued by the cabinet, in which there has been a complete severance of the ownership of the mineral rights from the ownership of the surface to be disturbed, to be invalid because applicants did not obtain the consent of all the cotenants. The Cabinet believes an amendment to existing administrative regulations is needed to provide additional detail to clear up confusion and provide a clear understanding of the issues related to co-tenancy on severed estates. This emergency regulation is necessary to immediately amend the cabinet's administrative regulations that deal with this confusing issue which could result in delayed permit issuance and ultimately a loss of state revenue. 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 Division of Mine Permits (Emergency Amendment)

405 KAR 8:040E. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.151, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

EFFECTIVE: August 6, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a permit for underground coal mining operations. This administrative regulation differs from the corresponding federal regulations as follows:

(1) Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 C.F.R. 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This administrative regulation makes underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended in 1994.

(2) Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of structures for which a presubsidence condition survey is required under 405 KAR 18:210, Section 1(4). The corresponding federal regulation does not require a sample letter. The federal regulations are structured so that these presubsidence surveys must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow the detailed surveys of structures to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to

owners of structures after permit issuance.

(3) Section 26 of this administrative regulation does not include the requirement at 30 C.F.R. 784.20(a)(3) for detailed surveys of the presubsidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance, and therefore are required under 405 KAR 18:210 rather than this administrative regulation.

(4) Section 26 of this administrative regulation applies to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation is limited to "drinking, domestic, or residential" water supplies. This administrative regulation applies to water supplies protected under KRS 350.421, whereas the federal regulation applies to water supplies protected under 30 U.S.C. 1309a.

(5) Section 32(3)(e) of this administrative regulation requires that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 C.F.R. 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended July 16, 1994. The federal regulation addresses water supplies protected under 30 U.S.C. 1309a, effective October 24, 1992.

(6) Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

- (a) A copy of the final approved design plans for impounding structures;
- (b) A copy of all correspondence with MSHA;
- (c) A copy of technical support documents requested by MSHA;
- (d) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) Applicability.

(a) This administrative regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this administrative regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

- 1. Legal, financial, compliance, and related information;
- 2. Environmental resources information; and
- 3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

- (1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;
- (2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:
 - (a) Applicant;
 - (b) Applicant's resident agent; and
 - (c) Person who will pay the abandoned mine land reclamation fee.
- (3) For each person who owns or controls the applicant:
 - (a) The person's name, address, Social Security number, and

employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain

the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those

documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; [or]

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes [a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by these methods].

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address,

the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or

state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 C.F.R. Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with

adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent

area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

- (a) The Corps of Engineers Wetlands Delineation Manual;
- (b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;
- (c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection

(2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (a) The type of mining method used;
- (b) The coal seams or other mineral strata mined;
- (c) The extent of coal or other minerals removed;
- (d) The approximate dates of past mining; and
- (e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered

professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
8. Each facility to be used to protect and enhance fish and wildlife related environmental values;
9. Each explosive storage and handling facility;
10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

- (a) A projected timetable for the completion of each major step

in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall include a map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the cabinet, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures identified in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures identified under this subsection for which a presubsidence survey is required under 405 KAR 18:210 Section 1(4).

(d)1. The application shall include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the application shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

2. If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this paragraph, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with 405 KAR 18:210.

(2) If the information submitted under subsection (1) of this section shows that no structures, or water supplies for domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided under this section.

(3) If the information submitted under subsection (1) of this section shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the cabinet determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings.

(b) A map of the underground workings at a scale of 1:12,000, or larger if determined necessary by the cabinet, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect

the likelihood or extent of subsidence and subsidence related damage.

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 405 KAR 18:210, Section 3.

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage including:

1. Backstowing or backfilling of voids;

2. Leaving support pillars of coal;

3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(f) A description of the anticipated effects of planned subsidence, if any.

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and

(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080; and

5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain

descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

- (a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this administrative regulation;
- (d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
- (e) Include any geotechnical investigation, design, and construction requirements for the structure;
- (f) Describe the operation and maintenance requirements for each structure; and
- (g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may

affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from

underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Office of Mine Safety and Licensing.

Section 39. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and

Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the 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: August 5, 2014

FILED WITH LRC: August 6, 2014 at 9 a.m.

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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 requirements for the grant of a permit for underground coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant an underground mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for underground mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each

permit applicant. The nature of the dispute will ultimately determine the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

(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 Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general 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 request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Michael Mullins

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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.

(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.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060(3)(d).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

STATEMENT OF EMERGENCY 907 KAR 15:005E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:025E, Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations and 907 KAR 15:020E, Coverage provisions and requirements regarding behavioral health services, to comply with a federal mandate. 907 KAR 15:020E and 907 KAR 15:025E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by behavioral health service organizations. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding behavioral health service organizations to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. 907 KAR 15:005E establishes definitions used in 907 KAR 15:020E and 907 KAR 15:025E. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. This emergency administrative regulation differs from the prior emergency administrative regulation filed with the Legislative Research Commission on December 30, 2013 in that it defines three (3) new terms – "behavioral health practitioner under supervision", "billing supervisor", and "certified alcohol and drug counselor" – which are practitioners authorized to provide or supervise services provided in behavioral health services organizations (BHSOs). BHSOs are a new provider being created via the aforementioned companion administrative regulations (907 KAR 15:020E and 907 KAR 15:025E). 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 Department for Medicaid Services Commissioner's Office (Emergency Amendment)

907 KAR 15:005E. Definitions for 907 KAR Chapter 15.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means a provider that is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;
 (g) A licensed clinical social worker;
 (h) A licensed professional clinical counselor;
 (i) A licensed marriage and family therapist;
 (j) A licensed psychological associate;
 (k) A marriage and family therapy associate;
 (l) A certified social worker;
 (m) A licensed professional counselor associate;
 (n) A licensed professional art therapist; or
 (o) A licensed professional art therapist associate.
 (3) "Behavioral health practitioner under supervision" means an individual who is:
(a) 1. A licensed psychological associate;
2. A licensed professional counselor associate;
3. A certified social worker;
4. A marriage and family therapy associate;
5. A licensed professional art therapist associate;
6. A licensed assistant behavior analyst;
7. A physician assistant; or
8. A certified alcohol and drug counselor; and
(b) Employed by or under contract with the same billing provider as the billing supervisor.
 (4) "Billing provider" means the individual who, or group of individual providers that, or organization that:
 (a) Is authorized to bill the department or a managed care organization for a service; and
 (b) Is eligible to be reimbursed by the department or a managed care organization for a service.
 (5) "Billing supervisor" means an individual who is:
(a) 1. A physician;
2. A psychiatrist;
3. An advanced practice registered nurse;
4. A licensed psychologist;
5. A licensed clinical social worker;
6. A licensed professional clinical counselor;
7. A licensed psychological practitioner;
8. A licensed marriage and family therapist;
9. A licensed professional art therapist; or
10. A licensed behavior analyst; and
(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.
 (6) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.
 (7) [(4)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.
 (8) [(5)] "Department" means the Department for Medicaid Services or its designee.
 (9) [(6)] "Electronic signature" is defined by KRS 369.102(8).
 (10) [(7)] "Enrollee" means a recipient who is enrolled with a managed care organization.
 (11) [(8)] "Face-to-face" means occurring:
 (a) In person; or
 (b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.
 (12) [(9)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.
 (13) [(10)] "Federal financial participation" is defined by 42 C.F.R. 400.203.
 (14) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.
 (15) [(11)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
 (16) [(12)] "Licensed behavior analyst" is defined by KRS 319C.010(6).
 (17) [(13)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
 (18) [(14)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).
 (19) [(15)] "Licensed professional art therapist" is defined by

KRS 309.130(2).
 (20) [(16)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).
 (21) [(17)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).
 (22) [(18)] "Licensed professional counselor associate" is defined by KRS 335.500(4).
 (23) [(19)] "Licensed psychological associate" means an individual who:
 (a) 1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
 2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or
 (b) Is a certified psychologist.
 (24) [(20)] "Licensed psychological practitioner" means an individual who:
 (a) Meets the requirements established in KRS 319.053; or
 (b) Is a certified psychologist with autonomous functioning.
 (25) [(21)] "Licensed psychologist" means an individual who:
 (a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and
 (b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.
 (26) [(22)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
 (27) [(23)] "Marriage and family therapy associate" is defined by KRS 335.300(3).
 (28) [(24)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
 (29) [(25)] "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.
 (30) [(26)] "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.
 (31) [(27)] "Physician" is defined by KRS 205.510(11).
 (32) [(28)] "Physician assistant" is defined by KRS 311.840(3).
 (33) [(29)] "Provider" is defined by KRS 205.8451(7).
 (34) [(30)] "Provider abuse" is defined by KRS 205.8451(8).
 (35) [(31)] "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:
 (a) Render health services; and
 (b) Bill the Medicaid Program for services rendered to Medicaid recipients.
 (36) [(32)] "Recipient" is defined by KRS 205.8451(9).
 (37) [(33)] "Recipient abuse" is defined by KRS 205.8451(10).
 (38) [(34)] "Registered nurse" is defined by KRS 314.011(5).
 (39) [(35)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LAWRENCE KISSNER, Commissioner
 AUDREY TAYSE HAYNES, Secretary
 APPROVED BY AGENCY: July 8, 2014
 FILED WITH LRC: July 22, 2014 at 3 p.m.
 CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
 (a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independently enrolled providers (such as a licensed psychologist, licensed professional clinical counselor, licensed clinical social worker, licensed psychological practitioner, licensed marriage and family therapist) rather than agency behavioral health service

providers (such as a community mental health center, federally qualified health center, or rural health clinic.)

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers. The Department for Medicaid Services (DMS) is expanding its scope of behavioral health service coverage to include substance use disorder services as a result of an Affordable Care Act mandate for Medicaid programs to cover such services for all Medicaid recipients. Currently, DMS covers such services for pregnant women and children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 creates/inserts a definition for "behavioral health practitioner under supervision", "billing supervisor", "certified alcohol and drug counselor", and "healthcare common procedure coding system".

(b) The necessity of the amendment to this administrative regulation: Inserting the four (4) new definitions is necessary to define practitioners authorized to render services in a behavioral health services organization or BHSO. A BHSO is a new category of provider of behavioral health services of which the coverage and reimbursement provisions are established in 907 KAR 15:020 (Coverage provisions and requirements regarding behavioral health services) and 907 KAR 15:025 (Reimbursement provisions and requirements regarding behavioral health services). Coverage and reimbursement of BHSO services is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments after comments will conform to the content of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments after comments will assist in the effective administration of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

(3) List the type and number of individuals, businesses,

organizations, or state and local government affected by this administrative regulation: Medicaid recipients of behavioral health services and BHSOs (as well as behavioral health practitioners who work for BHSOs) will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation as it only contains definitions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to

expand its behavioral health provider/practitioner base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

STATEMENT OF EMERGENCY 907 KAR 15:020E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:025E, Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations, to comply with a federal mandate. 907 KAR 15:020E and 907 KAR 15:025E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by behavioral health service organizations. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding behavioral health service organizations to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. 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 Department for Medicaid Services Division of Policy and Operations (New Emergency Administrative Regulation)

907 KAR 15:020E. Coverage provisions and requirements regarding services provided by behavioral health service organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in the recipient's treatment plan; and

(b) Provided in accordance with the recipient's treatment plan.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be licensed as a behavioral health services organization in accordance with 902 KAR 20:430; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and

state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

- (a) Mental health disorder;
- (b) Substance use disorder; or
- (c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the corresponding following requirements:

(a) A screening, crisis intervention, or intensive outpatient program services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse; or
- 10. A behavioral health practitioner under supervision except for

a licensed assistant behavior analyst;

(b) An assessment provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;
- 10. A licensed behavior analyst; or
- 11. A behavioral health practitioner under supervision except for

a certified alcohol and drug counselor;

(c) Psychological testing provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological associate working under the supervision of a licensed psychologist; or
- 3. A licensed psychological practitioner;

(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;
- 10. A behavioral health practitioner under supervision except for

a licensed assistant behavior analyst; or

11. A peer support specialist working under the supervision of an approved behavioral health services provider;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health service provider;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(g) Family outpatient therapy provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse; or
- 10. A behavioral health practitioner under supervision except for

a:

a. Licensed assistant behavior analyst; or

b. Certified alcohol and drug counselor;

(h) Service planning provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;
- 10. A licensed behavior analyst; or
- 11. A behavioral health practitioner under supervision except for

a certified alcohol and drug counselor;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse; or
- 10. A behavioral health practitioner under supervision except for

a licensed assistant behavior analyst;

(j) Assertive community treatment provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;
- 10. A behavioral health practitioner under supervision except for

a:

a. Licensed assistant behavior analyst; or

b. Certified alcohol and drug counselor;

11. A peer support specialist working under the supervision of an approved behavioral health service provider; or

12. A community support associate;

(k) Comprehensive community support services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A licensed clinical social worker;
- 4. A licensed professional clinical counselor;
- 5. A licensed professional art therapist;
- 6. A licensed marriage and family therapist;
- 7. A physician;
- 8. A psychiatrist;
- 9. An advanced practice registered nurse;
- 10. A licensed behavior analyst;
- 11. A behavioral health practitioner under supervision except for

a certified alcohol and drug counselor; or

12. A community support associate; or

- (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for
- a.
 - a. Licensed assistant behavior analyst; or
 - b. Certified alcohol and drug counselor; or
 11. A peer support specialist working under the supervision of an approved behavioral health services provider.
- (3)(a) A screening shall:
 1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
 2. Not establish the presence or specific type of disorder; and
 3. Establish the need for an in-depth assessment.
- (b) An assessment shall:
 1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual 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 individual to develop a treatment and service plan; and
 4. Not include psychological or psychiatric evaluations or assessments.
- (c) Psychological testing shall include:
 1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 2. Interpretation and a written report of testing results.
- (d) Crisis intervention:
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 - a. The recipient; or
 - b. Another individual;
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
 3. Shall be provided:
 - a. On-site at the behavioral health services organization's office;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient;
 4. Shall be followed by a referral to non-crisis services if applicable; and
 5. 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 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 behavioral health services including treatment and supports to:
 - (i) Reduce symptoms or harm; or
 - (ii) Safely transition an individual in an acute crisis to the

appropriate least restrictive level of care.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

- a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and
- b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services for an individual with a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) 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);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan if the recipient has an individualized educational plan;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g)1. Peer support services shall:

a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer, parent, or family member;

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the

behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 2:230, or 908 2:240;

c. Use an approved behavioral health services provider to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's treatment plan;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan;

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of a mental health disability;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. 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)1. Residential services for substance use disorders shall:
 a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;
 b. Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;
 c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;
 d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;
 e. Be provided under the medical direction of a physician;
 f. Provide continuous nursing services;
 g. Be based on individual need and may include:
 (i) A screening;
 (ii) An assessment;
 (iii) Service planning;
 (iv) Individual outpatient therapy;
 (v) Group outpatient therapy;
 (vi) Family outpatient therapy; or
 (vii) Peer support; and
 h. Be provided in accordance with 908 KAR 1:370.
 2. The physical structure in which residential services for substance use disorders is provided shall:
 a. Have more than eight (8) but less than seventeen (17) beds; and
 b. Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.
 3. A short-term length-of-stay for residential services for substance use disorders:
 a. Shall be less than thirty (30) days in duration;
 b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:
 (i) Stabilize a recipient's substance use disorder; and
 (ii) Help the recipient develop and apply recovery skills; and
 c. May include the services listed in subparagraph 1.g. of this paragraph.
 4. A long-term length-of-stay for residential services for substance use disorders:
 a. Shall be between thirty (30) days and ninety (90) days in duration;
 b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:
 (i) Stabilize a recipient's substance use disorder; and
 (ii) Help the recipient develop and apply recovery skills; and
 c. May include the services listed in subparagraph 1.g. of this paragraph.
 5. Residential services for substance use disorders shall not include:
 a. Room and board;
 b. Educational services;
 c. Vocational services;
 d. Job training services;
 e. Habilitation services;
 f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;
 g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;
 h. Recreational activities;
 i. Social activities; or
 j. Services required to be covered elsewhere in the Medicaid state plan.
 6. To provide residential services for substance use disorders, a behavioral health services organization shall:
 a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and
 b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.

(o) Screening, brief intervention, and referral to treatment for a substance use disorder shall:
 1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and
 2. Consist of:
 a. Using a standardized screening tool to assess an individual for risky substance use behavior;
 b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and
 c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.
 (p)1. Assertive community treatment shall:
 a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a serious mental illness; and
 b. Include:
 (i) Assessment;
 (ii) Treatment planning;
 (iii) Case management;
 (iv) Psychiatric services;
 (v) Medication prescribing and monitoring;
 (vi) Individual outpatient therapy;
 (vii) Family outpatient therapy;
 (viii) Group outpatient therapy;
 (ix) Mobile crisis services;
 (x) Crisis intervention;
 (xi) Mental health consultation; or
 (xii) Family support and basic living skills.
 2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.
 b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:
 (i) Reduce conflict; and
 (ii) Increase the recipient's autonomy and independent functioning.
 c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.
 3. To provide assertive community treatment services, a behavioral health services organization shall:
 a. Employ at least one (1) team of multidisciplinary professionals:
 (i) Led by a qualified mental health professional; and
 (ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services provider, a case manager, or a co-occurring disorder specialist;
 b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);
 c. Have the capacity to:
 (i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;
 (ii) Coordinate the provision of services among team members;
 (iii) Provide the full range of assertive community treatment services as stated in this paragraph; and
 (iv) Document and maintain individual case records; and
 d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.
 (q)1. Comprehensive community support services shall:
 a. Be activities necessary to allow an individual to live with maximum independence in the community;
 b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's treatment plan; and

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

- (i) Improve daily living skills;
- (ii) Improve self-monitoring of symptoms and side effects;
- (iii) Improve emotional regulation skills;
- (iv) Improve crisis coping skills; and
- (v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(r)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; and

b. Designed to maximize the reduction of a mental health disability and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

- (i) Improving daily living skills;
- (ii) Self-monitoring of symptoms and side effects;
- (iii) Emotional regulation skills;
- (iv) Crisis coping skill; and
- (v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening; or
4. An assessment.

(2) For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) A screening;
- (b) An assessment;
- (c) Service planning;
- (d) A psychiatric service;
- (e) Individual outpatient therapy;
- (f) Group outpatient therapy;
- (g) Family outpatient therapy; or
- (h) Peer support services.

(3) For a recipient who is receiving assertive community

treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) An assessment;
- (b) Case management;
- (c) Individual outpatient therapy;
- (d) Group outpatient therapy;
- (e) Peer support services; or
- (f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment for a substance use disorder provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;
e. Health insurance or Medicaid information;
f. Referral source and address of referral source;
g. Primary care physician and address;
h. The reason the individual is seeking help including the presenting problem and diagnosis;
i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
(i) Where the individual is receiving treatment for the physical health diagnosis; and
(ii) The physical health provider; and
j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:
(i) This administrative regulation;
(ii) The behavioral health services organization's licensure board;
(iii) State law; or
(iv) Federal law;
2. Documentation of the:
a. Screening;
b. Assessment if an assessment was performed;
c. Disposition if a disposition was performed; and
d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;
3. A complete history including mental status and previous treatment;
4. An identification sheet;
5. A consent for treatment sheet that is accurately signed and dated; and
6. The individual's stated purpose for seeking services; and
(b) Be:
1. Maintained in an organized central file;
2. Furnished to the:
a. Cabinet for Health and Family Services upon request; or
b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
3. Made available for inspection and copying by:
a. Cabinet for Health and Family Services' personnel; or
b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.
(4) Documentation of a screening shall include:
(a) Information relative to the individual's stated request for services; and
(b) Other stated personal or health concerns if other concerns are stated.
(5)(a) A behavioral health services organization's notes regarding a recipient shall:
1. Be made within forty-eight (48) hours of each service visit; and
2. Describe the:
a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
b. Therapist's intervention;
c. Changes in the treatment plan if changes are made; and
d. Need for continued treatment if continued treatment is needed.
(b)1. Any edit to notes shall:
a. Clearly display the changes; and
b. Be initialed and dated by the person who edited the notes.
2. Notes shall not be erased or illegibly marked out.
(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional.
2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:
a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.
(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:
(a) A provisional diagnosis;
(b) A referral for further consultation and disposition, if applicable; or
(c)1. If applicable, termination of services and referral to an outside source for further services; or
2. If applicable, termination of services without a referral to further services.
(7)(a) The treatment plan of a recipient who continues to receive services shall be reviewed at least once every six (6) months.
(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering practitioner.
(8)(a) Notes regarding services to a recipient shall:
1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.
(b) Initials, typed signatures, or stamped signatures shall not be accepted.
(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:
1. Be recorded in the notes; and
2. Not be reimbursable.
(9)(a) A termination summary shall:
1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:
a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;
b. Final diagnosis of clinical impression; and
c. Individual's condition upon termination and disposition.
(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.
(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.
(11) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:
(a)1. The Health Insurance Portability and Accountability Act;
2. 42 U.S.C. 1320d-2 to 1320d-8; and
3. 45 C.F.R. Parts 160 and 164; or
(b)1. 42 U.S.C. 290 ee-3; and
2. 42 C.F.R. Part 2.
(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:
1. Remain the property of the behavioral health services organization; and
2. Be subject to the retention requirements established in subsection (13) of this section.
(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.
(13)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management service shall maintain a case record regarding a recipient for at least six (6) years from the

date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient;

and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

- a. Behavioral health services organization shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is

valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 22, 2014 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:025, Reimbursement for behavioral health services provided by behavioral health services organizations. To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

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

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

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

authorizing statutes: This is a new administrative regulation rather than an amendment.

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as behavioral health services organizations will be affected by this administrative regulation. Currently, there are forty-six (46) entities that provide behavioral health services via DMS's "Impact Plus" program. These entities provide such services as subcontractors of the Department for Behavioral Health, Intellectual and Developmental Disabilities (DBHDID) or the Department for Community Based Services (DCBS.) DMS anticipates that each of the entities will enroll as in the Medicaid Program as BHSOs. Additionally, the following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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 907 KAR 15:025E

This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:020E, Coverage provisions and requirements regarding behavioral health services provided by behavioral health service organizations to comply with a federal mandate. 907 KAR 15:020E and 907 KAR 15:025E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by behavioral health service organizations. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding behavioral health service organizations to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation. 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

Department for Medicaid Services

Division of Policy and Operations

(New Emergency Administrative Regulation)

907 KAR 15:025E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: July 22, 2014

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health service organizations to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

- (1) Medically necessary;
- (2) Provided:
 - (a) To a recipient;
 - (b) By a behavioral health service organization that meets the provider participation requirements established in 907 KAR 15:020; and
 - (c) In accordance with the requirements established in 907 KAR 15:020; and
- (3) Covered in accordance with 907 KAR 15:020.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

- (a) Fifteen (15) minutes in length; or
- (b) The unit amount identified in the corresponding:
 1. Current procedural terminology code; or
 2. Healthcare common procedure coding system code.
- (2) The rate per unit for a screening or for crisis intervention shall be:
 - (a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
 1. Physician; or
 2. Psychiatrist;
 - (b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
 1. An advanced practice registered nurse; or
 2. A licensed psychologist;
 - (c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
 1. Licensed professional clinical counselor;
 2. Licensed clinical social worker;
 3. Licensed psychological practitioner;
 4. Licensed marriage and family therapist; or
 5. Licensed professional art therapist; or
 - (d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
 1. Marriage and family therapy associate working under the supervision of a billing supervisor;
 2. Licensed professional counselor associate working under the supervision of a billing supervisor;
 3. Licensed psychological associate working under the supervision of a billing supervisor;
 4. Certified social worker working under the supervision of a billing supervisor;
 5. Physician assistant working under the supervision of a billing

supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor.

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.

(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the

supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; or

5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor; or

6. Licensed professional art therapist associate working under the supervision of a billing supervisor.

(7) Reimbursement for the following services shall be as established on the BHSO Non-Medicare Services Fee Schedule:

(a) Mobile crisis services;

(b) Day treatment;

(c) Peer support services;

(d) Parent or family peer support services;

(e) Intensive outpatient program services;

(f) Service planning;

(g) Residential services for substance use disorders;

(h) Screening, brief intervention, and referral to treatment;

(i) Assertive community treatment;

(j) Comprehensive community support services; or

(k) Therapeutic rehabilitation services.

(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. A final version, the department shall use the final version.

(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:020; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 6. Incorporation by Reference. (1) "BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 22, 2014 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:020 (Coverage provisions and requirements regarding services provided by behavioral health services organizations) and the Cabinet for Health and Family Services, Office of Inspector General's BHSO licensure administrative regulation (902 KAR 20:430). To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; parent or family peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. The Department for Medicaid Services (DMS) will reimburse a percent of Medicare (tiered based on practitioner qualifications) for services that are covered by Medicare and per a fee schedule, incorporated by reference, for services not covered by Medicare.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal

mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who

undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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 922 KAR 1:360E

This emergency administrative regulation is necessary to comply with provisions of the State Executive Branch Budget Bill enacted during the 2014 Regular Session (i.e., Ky. Acts ch. 117). The biennium budget for years 2015 and 2016 appropriates an increase in reimbursement rates for care and services provided to children in the custody of the Cabinet for Health and Family Services by private residential child-caring facilities serving children with levels of care IV and V and private child-placing agencies for foster care. The rate modification is effective August 4, 2014. The rate increase supports the services conceptualized as family-centered, youth-guided, time-limited, intensive, evidence-informed practices that promote the child welfare goals of safety, permanency, well-being, and stability. An ordinary administrative regulation would not allow the agency sufficient time to implement private child care provider rate increases by August 4, 2014. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(24)(23), 605.090(1)(b), (d), 610.110, 2014 Ky. Acts ch. 117 Part 1, G. 9(7) [2008-Acts ch. 427 Part 1, H.10(3)], 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

EFFECTIVE: August 1, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS

199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(24)(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation, which includes the following:

(a) DPP-886, Private Child Care Client Inter-agency Referral Form;

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or
2. Child Behavior Checklist For Ages 6-18; (Achenbach).

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

- (a) Identifying the child's current level of functioning; and
- (b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out;

2. Legal history, status, or delinquency behavior patterns;

(h) Out of home care placement information including:

1. Reason for entering out of home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Education;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4)(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency Referral Form, to the department;

(3) Reassess a child utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency; and

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. A level of care shall be assigned in accordance with the following standards:

(1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

- (b) Requires supervision in a structured supportive setting with:
 1. Counseling available from professional or paraprofessional staff;
 2. Educational support; and
 3. Services designed to improve development of normalized social skills.
- (3) A Level III child:
 - (a) May engage in an occasional violent act;
 - (b) May have superficial or fragile interpersonal relationships;
 - (c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;
 - (d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
 - (e) Requires a program flexible enough to allow:
 1. Extended trials of independence when the child is capable;
 2. A period of corrective and protective structure during relapse; and
- 3. Counseling available from professional or paraprofessional staff.
- (4) A Level IV child:
 - (a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and
 - (b) Requires a structured supportive setting with:
 1. Therapeutic counseling available by professional staff; and
 2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.
- (5) A Level V child:
 - (a) Has a severe impairment, disability, or need;
 - (b) Is consistently unable or unwilling to cooperate in his own care;
 - (c) Presents a severe risk of causing harm to himself or others; and
 - (d) Requires Level IV services and a:
 1. Highly structured program with twenty-four (24) hour supervision; or
 2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

- (a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).
- (b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the[Form] DPP-888, Cost Report and Time Study and Instructions.
- (2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.
 - (a) The factor shall be determined as follows:
 1. Based on the amount of treatment provided at each level of care; and
 2. By determining the median of:
 - a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and
 - b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;
 - (b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one[.1] (1).₂
 2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.
 - (3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.
 - (4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the

Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

- (5) Statewide median cost shall be calculated:
 - (a) Using a utilization factor of eighty (80) percent:
 1. For an emergency shelter with a treatment license:
 - a. Board;
 - b. Care; and
 - c. Treatment components; or
 2. For an emergency shelter without a treatment license:
 - a. Board; and
 - b. Care components; and
 - (b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.
- (6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:
 1. Child safety while in the care of a private child-caring facility or child-placing agency;
 2. Child safety after reunification with the child's family;
 3. Adequate educational support;
 4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
 5. Increased placement stability during the service period;
 6. Increased achievement of permanency goals; and
 7. Increased stability in permanency placement following planned discharge.
- (b) The cabinet's contract with a private child-caring facility shall specify the:
 1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection of this section; and
 2. Target percentages used as performance goals.
- (c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.
- (d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.
- (e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.
- (7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:
 - (a) Shall be geared toward improved performance outcomes; and
 - (b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.
- (8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:
 - (a) Reduced length of stay in out-of-home placement;
 - (b) Increased safety from child abuse or neglect;
 - (c) Increased number of children moving into and remaining in permanent placement;
 - (d) Increased number of children and their families cared for in close proximity to their home communities;
 - (e) Increased number of children reunified with their families;
 - (f) Increased accountability for success in after care; or
 - (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities

established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I - fifty-one (51) dollars and nineteen (19) cents;
- (b) Level II - sixty-one (61) dollars and fifty-two (52) cents;
- (c) Level III - \$109.71;
- (d) Level IV:

1. [-] \$151.03; or

2. \$175.87 on or after August 4, 2014; and

(e) Level V:

1. [-] \$210.64; or

2. \$218.99 on or after August 4, 2014.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) \$115.31 per day for a child-caring facility with a treatment license; or

(b) \$101.41 per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be:

(a) Forty-three (43) dollars; or

(b) Forty-four (44) dollars and eighty-two (82) cents on or after August 4, 2014.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher;

1. [-] Seventy-three (73) dollars; or

2. Seventy-six (76) dollars and ten (10) cents on or after August 4, 2014.

(b) Level III: [-]

1. Seventy-nine (79) dollars and seventy-eight (78) cents; or

2. Eighty-three (83) dollars and sixteen (16) cents on or after August 4, 2014.

(c) Level IV: [-]

1. Ninety-seven (97) dollars and eleven (11) cents; or

2. \$101.23 on or after August 4, 2014.

(d) Level V:

1. [-] \$134.26; or

2. \$139.96 on or after August 4, 2014.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the

adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation [forty-three (43) dollars per day,] for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ [above] seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation:

a. Child Behavior Checklist for Ages one and one-half (1-1/2)–five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6)–eighteen (18) (Achenbach), every six (6) months; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP) [following completed forms]:

a. On a quarterly basis, for a private child care residential placement [CRP-001, Children's Review Program Residential Application for Level of Care Payment]; or

b. On a semiannual basis for a foster care placement [CRP-003, Children's Review Program Foster Care Application for Level of Care Payment];

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this

administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2[CRP-002], Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, ~~form~~ for a utilization review;

3. CRP-5[CRP-005], Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, ~~form~~ for a utilization review; or

4. CRP-6[CRP-006], Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, ~~form~~ for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4[CRP-004], Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4[CRP-004], the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4[CRP-004], the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4[CRP-004], an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(f) of this administrative regulation~~[If the child has an IQ of seventy (70) or above:~~

~~a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or~~

~~b. Child Behavior Checklist for Ages six (6) - eighteen (18)].~~

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

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

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", ~~edition~~ 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", ~~edition~~ 6/01;

(c) "CRP-2[CRP-001], Children's Review Program Residential Application for Level of Care Payment", ~~edition~~ 11/04;

(d) "CRP-002], Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", ~~8/14~~ ~~edition~~ 11/04;

(d) "CRP-4[(e)] "CRP-003], Children's Review Program Foster Care Application for Level of Care Payment", ~~edition~~ 7/07;

(f) "CRP-004], Children's Review Program Notice of Level of Care Redetermination", ~~8/14~~ ~~edition~~ 11/04;

(e) ~~[(g)]~~ "CRP-5[CRP-005], Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", ~~8/14~~ ~~edition~~ 11/04;

(f) ~~[(h)]~~ "CRP-6[CRP-006], Children's Review Program Private

Child Care Notice of Level of Care Payment Authorization Reassignment", 8/14[~~edition 7/07~~];

(g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 8/14;

(h)(~~(i)~~) "DPP-114, Level of Care Schedule", 8/14[~~edition 6/08~~];

(i)(~~(j)~~) "DPP-886, Private Child Care Client Inter-agency Referral Form",[~~edition~~] 10/04;

(j)(~~(k)~~) "DPP-886A, Application for Referral and Needs Assessment", ~~edition 07/07~~;

(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities",[~~edition~~] 10/04; and

(k)(~~(m)~~) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)",[~~edition~~] 1990.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 25, 2014

FILED WITH LRC: August 1, 2014 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility; a payment rate for each level; gatekeeper responsibilities; provider requirements; procedures for classification at the appropriate level of care; and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(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 increases the private residential child-caring facilities' and private child-placing agencies' foster care per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117), updates and streamlines incorporated materials, and makes technical clarifications to comply with KRS Chapter 13A and best practice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to increase private provider per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117) and to make updates and clarifications to incorporated materials with

reviews and inputs solicited from the Children's Alliance and the Children's Review Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its increase to the private provider per diems to comply with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117). In addition, it makes updates and clarifies incorporated materials necessitated to actualize these placement processes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its inclusion of enhanced private provider per diems in accordance with appropriations, improvements to incorporated materials, and other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2014, there were 7,778 children in the custody of the cabinet of which 930 are placed with private residential child-caring facilities with levels of care IV and V. There are an additional 2,971 children placed with private child placing agencies in either basic foster care or levels I through V. There are presently forty-seven (47) private residential child caring and ninety-four (94) private child-placing licensed locations that have an existing agreement with the cabinet for out-of-home care services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Required incorporated materials have been updated to reflect best practice and aid in the determination of an appropriate level of care reimbursement rate for children.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117), private residential child-caring facilities will realize a twenty-four (24) dollar and eighty-four (84) cent reimbursement increase for children with a level of care IV and an eight (8) dollar and thirty-five (35) cent increase for children with a level of care V. Private child-placing agencies will realize per diem increases ranging from one (1) dollar and eighty-two (82) cents to five (5) dollars and seventy (70) cents for foster care services.

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

(a) Initially: The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be used as match for other fund sources. DCBS estimates an overall cost increase of \$9.5 million in state general, federal, and restricted funds for the first year.

(b) On a continuing basis: The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, restricted funds derived from Medicaid, federal Temporary Assistance for Needy Families Block Grant, and state funds are the sources of funding for 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: An increase in funding was provided to the cabinet through House Bill 235 of the 2014 General Assembly (Ky. Acts ch. 117).

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

administrative regulation does not establish any fees or directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672
2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 622, 672, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.
 - (c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be match for other fund sources. DCBS estimates an overall cost increase of \$9.5 million in state general, federal, and restricted funds for the first year.
 - (d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array within available funding.

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 922 KAR 2:160E

This emergency administrative regulation is necessary to comply with provisions of the State Executive Branch Budget Bill enacted during the 2014 Regular Session (i.e., Ky. Acts ch. 117). The biennium budget for years 2015 and 2016 includes restoration of the Child Care Assistance Program. The restoration of the program provided within this administrative regulation begins August 4, 2014, with adjustments effective July 1, 2015, in accordance with federal and state funding appropriations. This program supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. An ordinary administrative regulation would not allow the agency sufficient time to implement the restoration of the Child Care Assistance Program by August 4, 2014. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Emergency Amendment)

922 KAR 2:160E. Child Care Assistance Program.

RELATES TO: KRS[84-040,] 194A.060, 199.892, 199.894(1)(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(49), 605.120(5), 620.020(10), 2014 Ky. Acts ch. 117, Part 1, G.9(3), 7 C.F.R. 1463, 2012, 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 10602(c)[, Pub.L. 110-246]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

EFFECTIVE: August 1, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;
 (i) Change in child care provider;
 (j) Change in address or residence;
 (k) Change in marital status; or
 (l) Beginning or ending receipt of unearned income.
 (4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.
 (5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.
 (6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.
 (7) "Child care certificate" is defined by 45 C.F.R. 98.2.
 (8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).
 (9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.
 (10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.
 (11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.
 (12) "Family child-care home":
 (a) Is defined by KRS 199.894(5);
 (b) Is described in KRS 199.8982; and
 (c) Means a home certified in accordance with 922 KAR 2:100.
 (13) "Full day" means child care that is provided for five (5) or more hours per day.
 (14) "Health professional" means a person actively licensed as a:
 (a) Physician;
 (b) Physician's assistant;
 (c) Advanced registered nurse practitioner;
 (d) Qualified mental health professional as defined by KRS 600.020(49); or
 (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.
 (15) "In loco parentis" means a person acting in place of a parent, including:
 (a) A legal guardian;
 (b) An individual related by blood, marriage, or adoption to the child; or
 (c) A nonrelative pursuing legal custody of the child within one (1) year of application.
 (16) "Infant" means a child who is less than one (1) year old.
 (17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.
 (18) ~~"Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).~~
 (19) "Parent" is defined by 45 C.F.R. 98.2.
 (20) ~~(20)~~ "Part day" means child care that is provided for less than five (5) hours per day.
 (21) ~~(21)~~ "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.
 (22) ~~(22)~~ "Preventive services" is defined by KRS 620.020(10).
 (23) ~~(23)~~ "Provider" means the entity providing child care services.
 (24) ~~(24)~~ "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).
 (25) ~~(25)~~ "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.
 (26) ~~(26)~~ "Related" means having one (1) of the following relationships:
 (a) Child;
 (b) Stepchild;
 (c) Grandchild;
 (d) Great-grandchild;
 (e) Niece;
 (f) Nephew;

(g) Sibling;
 (h) Child in legal custody; or
 (i) Child living in loco parentis.
 (26) ~~(27)~~ "Responsible adult" means a person other than the applicant who is in the child's household and who is:
 (a) The natural parent, adoptive parent, or stepparent; or
 (b) The spouse of an individual caring for a child in loco parentis.
 (27) ~~(28)~~ "School-age child" means a child who has reached the sixth birthday.
 (28) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:
 (a) Defined by 7 U.S.C. 2012; and
 (b) Governed by 921 KAR Chapter 3.
 (29) "Teenage parent" means a parent who is nineteen (19) years of age or younger.
 (30) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday. ~~(31) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.~~

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and
 b. Needs special accommodation due to the impairment.

(b) If the applicant is physically unable to come to the office to apply, the applicant may designate an authorized representative to make application.

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or
 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;
 b. Technical eligibility; and
 c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

(6) Each decision regarding eligibility for assistance shall be

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supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen or qualified alien;

(b) Is under age:

- 1. Thirteen (13); or
- 2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed ~~child-care~~[child-care] center;

b. Certified ~~child-care~~[child-care] home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or ~~SNAP~~[food-stamp-assistance] case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care[An alternative program such as Head Start, state preschool, or state kindergarten]; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20)

hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7[(4)]; or

(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 6. Kentucky Works Child Care Eligibility Determination.

(1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a)[Prior to July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. ~~150 percent of the federal poverty level at the initial application; or~~

2. ~~165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

(b)] Effective July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 100 percent of the federal poverty level at the initial application; or

2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(b) On or after August 4, 2014, a child shall be eligible for the CCAP if the family's income is less than or equal to 140 percent of the 2011 federal poverty level at:

1. Initial application; or

2. Redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(c) On or after July 1, 2015, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 150 percent of the 2011 federal poverty level at initial application; or

2. 165 percent of the 2011 federal poverty level at redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family's income remains less than or equal to:

(a) 165 percent of the federal poverty level prior to July 1, 2013; or

(b)] 100 percent of the federal poverty level effective July 1, 2013;

(b) 140 percent of the 2011 federal poverty level on or after August 4, 2014; or

(c) 165 percent of the 2011 federal poverty level on or after July 1, 2015.

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(5) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP~~the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program)~~:

~~a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and~~
~~b. Governed by Title 921 KAR Chapter 3];~~

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall

be used;

3. A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered; and
- c. Converting the pay period figure to a monthly figure by

multiplying a:

- (i) Weekly amount by 4.334;
- (ii) Biweekly amount by 2.167; or
- (iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;
2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
4. Profit shall be determined by:
 - a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:
 - (i) Twelve (12) if the enterprise has been in operation for at least a year; or
 - (ii) The number of months the business has been operating if the business has been in existence for less than a year; and
 - b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:

- (a) Twelve (12) months; or
- (b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. ~~Urban~~;
4. ~~Nonurban~~;
5. ~~Licensed~~;
4. ~~6.~~ Certified;
5. ~~7.~~ Registered;
6. ~~8.~~ Infant/Toddler;
7. ~~9.~~ Preschool child; and
8. ~~10.~~ School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

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Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;
2. The closure of a provider;
3. Family circumstances, such as relocation, illness, or death;
- or
4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

- (a) Be offered choice of child care assistance subject to the availability of state and federal funds; and
- (b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:
 - a. Copayment;
 - b. Certification period; or
 - c. Household size;
2. Approval of:
 - a. Application; or
 - b. Continued eligibility; or
3. Adverse action, including:
 - a. Denial of application;
 - b. Reduction of CCAP benefits; or
 - c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:[]

1. Reason for the adverse action;
2. Citation from an applicable state administrative regulation;

and

3. Information regarding the:
 - a. Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and
 - b. Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a

maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

- (a) A disaster verified by utility provider, local, state, or federal government;
- (b) Closure of a provider;
- (c) Family circumstances, such as relocation, illness, or death;
- (d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(8) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(9) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(11) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

(d) 922 KAR 2:120, Child care facility health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and

(g) 922 KAR 2:190, Civil penalties.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The cabinet shall send a ~~[DCC-405 providing]~~ notice of adverse action ~~[in accordance with Section 11(5) of this administrative regulation,]~~ ten (10) calendar days in advance of this adverse action.

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(d) Teen parents attending high school or pursuing a general equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance

through employment;

(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is ~~(daily arrival and departure times of each child have been):~~

a. Recorded legibly each time the child arrives and each time the child departs the provider's care ~~(on a daily basis);~~ and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee; ~~and]~~

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:090, Child care center licensure;

2. 922 KAR 2:100, Certification of family child care homes;

3. 922 KAR 2:110, Child care facility provider requirements;

4. 922 KAR 2:120, Child care facility health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and

7. 922 KAR 2:190, Civil penalties; and

(e) Complete the cabinet approved training on billing and the DCC-94E:

1. Prior to receiving an initial payment from CCAP if the provider will begin participation in CCAP after the effective date of this administrative regulation; or

2. By August 4, 2015, if the provider began participation in CCAP prior to the effective date of this administrative regulation.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement ~~[Information]~~ Form, prior to receiving payment from the CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4) (a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve an operating plan that demonstrates the health, safety, and welfare of a child in care in accordance with this administrative regulation and an administrative regulation listed in subsection (1)(d) of this section.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A Disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

a. Entry into the provider's premises during operating hours; or

b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;[e]

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(5) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12[7](8) of this administrative regulation.

Section 17. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18 of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18. Administrative Hearings. An administrative hearing may be requested in accordance with:

(1) 922 KAR 1:320; or

(2) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance",[~~edition~~] 11/09;

(b) "DCC-90.1, Intent to Apply for Child Care Assistance",[~~edition~~] 11/09.

(c) "DCC-91, Client Rights and Responsibilities Sheet",[~~edition~~] 04/13;

(d) "DCC-94, Child Care Service Agreement and Certificate",[~~edition~~] 11/09;

(e) "DCC-94B, Licensed or Certified Provider Agreement[Information] Form", 7/14[~~edition 7/13~~];

(f) "DCC-94E, Child Care Daily Attendance Record[Records]",[~~edition~~] 7/13;

(g) "DCC-97, Provider Billing Form",[~~edition~~] 04/13;

(h) "DCC-105, Child Care Assistance Program Notice of Action",[~~edition~~] 11/09; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", 7/14[~~edition 11/09~~].

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 25, 2014

FILED WITH LRC: August 1, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone

502-564-7905, fax 502-564-7573, tricia.orne@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases the CCAP income eligibility criteria, specifically the federal poverty level, in accordance with available revenues, including the restoration of CCAP authorized by 2014 Ky. Acts ch. 117. In addition, the amendment delinks child care provider payment rates from the classification of cities, reinforces quality within CCAP, and makes technical corrections and clarifications in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to restore CCAP to a higher service level in response to 2014 Ky. Acts ch. 117, state budgetary context, and to protect and preserve provider rates from fluctuations that would otherwise be created by changes to city classifications. In addition, the administrative regulation is necessary to assure quality and compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by restoring CCAP in accordance with available federal and state funding and assuring stable child care provider payment rates and quality within CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP operates within available funding and quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of the third quarter of State Fiscal Year 2014, CCAP has served an average of 30,245 children in 16,670 families per month. For State Fiscal Year 2014, the numbers of providers participating in CCAP are as follows: 1,388 licensed (Type I and Type II), 208 certified, and 313 registered.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will make quality child care more accessible for low-income working households.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation imposes no direct cost to applicants and recipients of CCAP and their providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Low-income working households

will have improved access to quality child care.

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

(a) Initially: Funds to restore CCAP were appropriated in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues.

(b) On a continuing basis: Funds to restore CCAP were appropriate in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation are federal Child Care and Development Fund Block Grant, state matching, state maintenance of effort funds, 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: An increase in funding for CCAP was provided in 2014 Ky. Acts ch. 117.

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. Provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. While this administrative regulation protects and preserves the current provider payment rates by delinking the rates from the classification of cities, the provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS 194A.050, 199.892, 199.899A

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.899A, 42 U.S.C. 601-619, 45 C.F.R. 98

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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

(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 directly generate any new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The restoration of CCAP is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues.

(d) How much will it cost to administer this program for subsequent years? The restoration of CCAP, as proposed within this amendment, is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

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 922 KAR 5:070E

This emergency administrative regulation is necessary to modify existing policies and procedures governing adult protective services to implement Senate Bill 98 enacted during the 2014 Regular Session (KRS 209.032) congruent with its effective date, July 15, 2014. The new law authorizes a registry containing validated substantiated findings of adult abuse, neglect, and exploitation that is available for query by a vulnerable adult service provider and for self-queries by an individual in effort to discourage the recruitment and retention of perpetrators in positions serving vulnerable adults. In tandem with the new administrative regulation governing the registry, this administrative regulation offers additional protections supporting the health and welfare of Kentucky's vulnerable adult citizenry while it preserves the due process rights of alleged perpetrators in accordance with the new statute. An ordinary administrative regulation would not allow the cabinet time to implement Senate Bill 98 (KRS 209.032) by the new law's effective date July 15, 2014, and to realize these additional protections within the adult-serving community. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 5:070E. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, Chapter 209[209.005—209.200], 202A.051, 202B.100, 387.540(1), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

EFFECTIVE: July 23, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caretaker" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Employee" is defined by KRS 209.032(1)(a).

(7) "Exploitation" is defined by KRS 209.020(9).

(8)[(7)] "Investigation" is defined by KRS 209.020(10).

(9)[(8)] "Neglect" is defined by KRS 209.020(16).

(10)[(9)] "Protective services" is defined by KRS 209.020(5).

(11)[(10)] "Records" is defined by KRS 209.020(15).

(12) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(13) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

(a) Community resources;

(b) General adult services in accordance with 922 KAR 5:090; or

(c) Domestic violence protective services in accordance with 922 KAR 5:102.

(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:

(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and

(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse, as defined in KRS 209.020(8), if the report alleges:

1. Marks that are or have been observed on an adult that another individual allegedly inflicted;

2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;

3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or

4. An act of sexual abuse;

(b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:

- a. An act or omission by a caretaker; or
- b. The absence of a caretaker;
- 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
- 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
- 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
- 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;
- (c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:
 - 1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
 - 2. Physical or emotional dependency;
 - 3. Manipulation;
 - 4. Acquiescence; and
 - 5. Loss of resources; or
 - (d) An adult in need of protective services as defined in KRS 209.020(5).
 - (8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
 - (9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:
 - (a) The report does not meet the statutory definitions of:
 - 1. Adult; and
 - 2.a. Abuse;
 - b. Neglect; or
 - c. Exploitation; or
 - (b) There is insufficient information to:
 - 1. Identify or locate the adult; or
 - 2. Explore leads to identify or locate the adult.
 - (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):
 - (a) ~~Prepare an intake report on the "DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form"; and~~
 - (b) ~~Submit the DPP-115;~~
 - 4.] For a determination of investigation assignment by cabinet supervisory staff;
 - (b) ~~[2.] To the local guardianship office, if the adult is a state guardianship client; and~~
 - (c) ~~[3.] To appropriate authorized agencies, as specified in KRS 209.030(5).~~

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled

through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

(a) An emergency~~[-as defined in KRS 209.020(11)]~~, the investigation shall be initiated within one (1) hour; or

(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies; and

2. Individual may be required to testify in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4)[The DPP-115]; and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b) 1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry governed by 922 KAR 5:120.

Section 7. Opening a Case. (1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.110.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8[7]. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9[8]. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10[9]. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

(a) Manage personal affairs;

(b) Manage financial affairs; or

(c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective

service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11[10]. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

(a) The adult lacks the capacity to consent or refuses mental health treatment;

(b) Other resources are not available;

(c) Another petitioner is absent or unavailable; and

(d) Prior cabinet supervisory approval is obtained.

Section 12[14]. Reporting. (1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

(a) Use in future investigations; and

(b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;

2. Demographics;

3. Type of abuse;

4. The number of:

a. Accepted reports; and

b. Substantiated reports; and

5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13[42]. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in accordance with Section 14[43] of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14[13]. Appeal Rights. (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the employee shall receive appeals in accordance with 922 KAR 5:120[Section 14. Incorporation by Reference. (1) "DPP-115, Confidential—Suspected Abuse/Neglect, Dependency, or

~~Exploitation Reporting Form", edition 9/05, is incorporated by reference.~~

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2014

FILED WITH LRC: July 23, 2014 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for adult protective services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing cabinet procedures for intake and acceptance of reports alleging adult abuse, neglect, and exploitation and related services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for the protection of adults.

(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 aligns adult protective services with the caregiver misconduct registry established by Senate Bill 98 from the 2014 Regular Session and associated administrative regulation. In addition, the amendment removes the DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form, through exclusive reference to KRS 209.030, which establishes the information to be obtained from a reporting source. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for congruency with the caregiver misconduct registry newly authorized by KRS 209.032 and governed by 922 KAR 5:120. The amendment is also necessary for conformity with applicable statutes and the requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update of adult protective services policy and procedures in accordance with the registry newly authorized by KRS 209.032 (from the 2014 Regular Session).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes through its alignment with recently enacted legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for an adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS 209.032, specifically due process, are met.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an alleged perpetrator may qualify for addition to the caregiver misconduct registry contingent upon other criteria established by KRS 209.032, this administrative regulation, and 922 KAR 5:120, this administrative regulation outlines notification rights to the alleged perpetrator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will not incur a new or additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual who is an employee or is acting with the expectation of compensation will be provided notification of the investigation and requirements of KRS 209.032 prior to the individual being added to the caregiver misconduct registry. The registry affords additional protections to adults, while protecting the due process rights of the alleged perpetrators.

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

(a) Initially: The administrative body projects any costs associated with the implementation of this administrative regulation will be within existing appropriations.

(b) On a continuing basis: The administrative body anticipates any ongoing costs associated with this regulatory amendment will be within future appropriations.

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

The implementation and enforcement of this administrative regulation are supported through state general funds and federal funds available through the Social Services Block Grant.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1397

2. State compliance standards. KRS 194A.050(1), 209.030(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.030(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations 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:

STATEMENT OF EMERGENCY 922 KAR 5:120E

This emergency administrative regulation is necessary to implement Senate Bill 98 enacted during the 2014 Regular Session (KRS 209.032) congruent with its effective date, July 15, 2014. The new law authorizes a registry containing validated substantiated findings of adult abuse, neglect, and exploitation that is available for query by a vulnerable adult service provider and for self-queries by an individual in effort to discourage the recruitment and retention of perpetrators in positions serving vulnerable adults. In tandem with the amendment to the administrative regulation governing adult protective services, this administrative regulation offers additional protections supporting the health and welfare of Kentucky's vulnerable adult citizenry while it preserves the due process rights of alleged perpetrators in accordance with the new statute. An ordinary administrative regulation would not allow the Cabinet for Health and Family Services, Department for Community Based Services time to implement Senate Bill 98 (KRS 209.032) by the new law's effective date July 15, 2014, and to realize these additional protections within the adult-serving community. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (New Emergency Administrative Regulation)

922 KAR 5:120E. Caregiver misconduct registry and appeals.

RELATES TO: KRS Chapter 13B, 209

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

EFFECTIVE: July 23, 2014

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and

sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Employee" is defined by KRS 209.032(1)(a).

(5) "Exploitation" is defined by KRS 209.020(9).

(6) "Investigation" is defined by KRS 209.020(10).

(7) "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

(8) "Neglect" is defined by KRS 209.020(16).

(9) "Records" is defined by KRS 209.020(15).

(10) "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

(11) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(12) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry. (1) The cabinet shall establish a caregiver misconduct registry that contains an individual who was:

(a) Providing care to an adult as an employee or otherwise with the expectation of compensation;

(b) The perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and

2. Substantiated on or after July 15, 2014; and

(c) Subject to a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual subject to a validated substantiated finding of adult abuse, neglect, or exploitation shall:

(a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and

(b) Be removed from the caregiver misconduct registry:

1. In accordance with the error resolution process described in Section 5 of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to:

(i) An adult fatality or near fatality related to adult abuse or neglect;

(ii) A criminal conviction related to the incident for which the individual's name was placed on the caregiver misconduct registry; or

(iii) A civil judicial determination related to adult abuse, neglect, or exploitation.

(3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2); and

(b) An individual in accordance with KRS 209.032(3).

(4) The caregiver misconduct registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding. (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall:

(a) Send notice of the finding to the perpetrator by regular mail; or

(b) Give the notice of the finding to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice.

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032; and

(e) A statement that the individual subject to a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.

Section 4. Appeals. (1) In accordance with KRS 209.032, if the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall be afforded an opportunity for an administrative hearing.

(2) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only by the authority of state or federal law.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 5 of this administrative regulation.

Section 5. Error Resolution. (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the caregiver misconduct registry query which resulted in the error being identified; and

2. Error contained in the caregiver misconduct registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b) 1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based

upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 6. Incorporation by Reference. (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 7/14, is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2014

FILED WITH LRC: July 23, 2014 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of a person to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish processes for the caregiver misconduct registry, appeals, and error resolution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a caregiver misconduct registry, including due process and error resolution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth procedures for the state's caregiver misconduct registry.

(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: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for a vulnerable adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS 209.032, specifically due process, are met. In accordance with the authorizing statute, vulnerable adult services providers are required to query the registry to determine if a prospective employee is subject to a validated substantiated finding of adult abuse, neglect, or exploitation. Methods have also been provided for an individual to conduct a self-query of the registry or request error resolution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Individuals subject to a qualifying substantiated finding of adult abuse, neglect, or exploitation will be afforded due process in accordance the KRS Chapter 13B and KRS 209.032 prior to the individuals' names appearing on the caregiver misconduct registry. Providers and individuals will be directed to a website to conduct queries of the caregiver misconduct registry. Individuals who do not have access to the internet may also submit a paper-based self-query to the cabinet. Procedures have also been outlined for individuals who identify an error in a cabinet record.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Due process in accordance with KRS Chapter 13B and KRS 209.032, queries of the registry, and error resolution requests will be conducted by the cabinet without charge to the affected entities. Affected entities may exercise their rights to counsel, which may entail a related cost outside the cabinet's control.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will benefit the overall protection of vulnerable adults.

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

(a) Initially: The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(b) On a continuing basis: The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are funded through 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: An increase in fees or funding is not 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? Tiering is not applied, as this administrative regulation is applied in a like manner statewide.

this administrative regulation. This administrative regulation will generate no new revenues for subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Office of the Ombudsman, Department for Community Based Services, Office of Administrative and Technology Services, Office of Legal Services, and Division of Administrative Hearings, will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.032

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, August 7, 2014)

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

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

STATUTORY AUTHORITY: KRS 141.433(7)

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

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

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

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

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

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

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

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

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

(9) "Identification number" means the:

(a) Social Security Number for an individual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) 1. The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

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

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

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

(12) The name, identification number, type of investment

(whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

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

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

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

(14) The application fee;~~and~~

(15) The refundable performance fee.

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

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

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

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

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

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

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

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

(b) The identification number of the taxpayer;

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

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

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

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

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

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

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

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

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

Section 7. Information Required on the Form 8874(K)-B. The

following information shall be required on the Form 8874(K)-B:

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

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

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

(b) The identification number of the taxpayer;

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

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

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

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

(7) An explanation of the recapture;

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

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

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

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

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

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

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

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

(2) Form 8874(K)-B.

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

1. Attach a copy of Form 8874(K)-B to the tax return for the

~~taxable~~**[tax]** year that includes the tax credit recapture date; and

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

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

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

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

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

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

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

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 3, 2014

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

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for Professional Geologists
(As Amended at ARRS, August 7, 2014)

201 KAR 31:100. Administrative subpoena.

RELATES TO: KRS 322A.030(12)

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

~~(12)[322A.030(12)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(5) authorizes the Kentucky Board of Registration for Professional Geologists to promulgate administrative regulations required to perform its duties. KRS 322A.030(12) authorizes the board to issue subpoenas to assist in the investigation of a complaint or a~~of~~ suspected violation of KRS Chapter 322A. This administrative regulation establishes procedures for issuing an administrative subpoena.

Section 1. Definitions. (1) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, and drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio and video recordings;

(h) Correspondence;

(i) Electronic mail; or

(j) Drawings and blueprints[any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including, but not limited to, originals, copies and drafts and both sides thereof, and including but not limited to: papers, books, letters, photographs, objects, tangible things, correspondence, electronic mail, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, drawings, blueprints, and tape recordings of any type or size, and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical reports, desk calendars, appointment books, diaries, lists, tabulations, summaries, sound recordings, computer printouts, data processing input and output, microfilms, and all other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing, however denominated].

(2) "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

Section 2. The Kentucky Board of Registration for Professional Geologists may issue an administrative subpoena to investigate a complaint or suspected violation of KRS Chapter 322A.

Section 3. Administrative Subpoenas. (1) The board shall[may] issue a subpoena in accordance with KRS 322A.030(12) to require the production of books, papers, documents, or other evidence at a specified time and place.

(2) If information requested by the board is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the board that the requested information has been translated to a readable format without error or omission.

(3) A person or entity served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the board.

Section 4. Noncompliance. (1) If a person fails without good

cause to produce requested documents in accordance with Section 3(1) of this administrative regulation, the board may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 3(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

LARRY R. RHODES, Chairman

APPROVED BY AGENCY: June 10, 2014

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

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Massage Therapy
(As Amended at ARRS, August 7, 2014)

201 KAR 42:035. Application process, exam, and curriculum requirements.

RELATES TO: KRS 309.358, 309.359, 309.362, 309.363

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and to evaluate the qualifications of applicants for licensure. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364, including educational program curriculum. The board may[is required to] issue a license to an applicant meeting the standards established in KRS 309.358 or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the required documentation with the board, meeting the requirements established[set forth] in KRS 309.358; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. (1) To comply with KRS 309.358(4), an applicant shall submit to the board, upon[at the time of] application, an official transcript or certificate that:

(a) Shows the completion of at least 600 classroom hours earned at a board approved massage therapy program; and

(b) Itemizes[itemizing] compliance with the clock hour requirements established in KRS 309.363(1)[earned at a board approved massage therapy program].

(2) Board approved massage therapy programs include only those programs holding a certificate of good standing issued pursuant to KRS 309.363.

(3) A massage therapy school which has registered and obtained a school code assignment with the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) shall maintain good standing with the NCBTMB during the entire period [during which] the applicant attended the school. Suspension or revocation of the NCBTMB school code at any time during that period shall constitute grounds for:

(a) Denial of an application for licensure by graduates of that school; and

(b)[shall constitute grounds for] Revocation of a Certificate

of Good Standing held by the massage therapy school.

(4) A school's non-renewal of an NCBTMB code while in good standing shall not preclude an applicant from obtaining licensure.

Section 3. Examinations. (1) An applicant shall successfully pass an examination:

- (a) Listed in KRS 309.358(5); or
- (b) Approved by the board pursuant to KRS 309.358(5) and listed in subsection (4) of this section.

(2) An examination shall be approved by the board as meeting the standard established in KRS 309.358(5) if the board finds[determines] that the examination:

- (a) Has been scientifically constructed to be valid and objective;
 - (b) Reflects the curriculum content established in KRS 309.363(1);
 - (c) Has security procedures to protect the exam content; and
 - (d) Has clear application, reporting, and appeal procedures.
- (3) Approval of exams shall be noted in the board minutes and on the board Web site.

(4) The following examinations have been approved by the board pursuant to KRS 309.358(5):

- (a) The Massage and Bodywork Licensing Examination (MBLEX) or other exam administered by the Federation of State Massage Therapy Boards;
- (b) The State of Ohio Massage Therapy Licensing Exam;
- (c) The State of New York Massage Therapy Licensing Exam;

or

(d) The National Board Certification Agency (NBCA) Massage Therapy Certification Exam, Level One.

Section 4. An applicant with a criminal history, excluding minor traffic violations, shall be interviewed by the board's Application Committee prior to licensure to find if the applicant complies with the requirement for good moral character established in KRS 309.358(3) and 335B.040, and the interview shall be conducted pursuant to the board's authority under KRS 309.362(1)(b).

Section 5. Appeals. (1) Upon initial review, the board shall make a preliminary determination with respect to an application. Preliminary determinations shall be final non-final determinations until:

(a) A final decision is rendered subsequent to an administrative hearing conducted pursuant to KRS Chapter 13B;

(b)[f.] Settlement of the matter by informal proceedings is accomplished;[f.] or

(c) The time for appeal under Section 2(5)[(2)] of this administrative regulation has expired.

(2) An applicant may appeal a preliminary determination[decision] denying his or her licensure application by requesting a hearing in accordance with KRS 309.362(4). In order to request a hearing, the applicant shall file a notice of appeal [such] that [it] is received by the board within thirty (30) days of the date of the letter informing the applicant of the preliminary determination of denial.

Section 6[5]. Incorporation by Reference. (1) The "Application for Licensure as a Massage Therapist", August[February] 2014[April 2013], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS HANSEN, Board Chair

APPROVED BY AGENCY: January 27, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Massage Therapy
(As Amended at ARRS, August 7, 2014)

201 KAR 42:040. Renewal.

RELATES TO: KRS 309.357(3), (4), (5), (6), 309.361, 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and authorizes licensure renewal. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation establishes the requirements for renewal of licenses.

Section 1. (1) A license to practice massage therapy shall be renewed upon:

(a)[(4)] Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license; and

(b)[(2)] Submission to the board of the Application for Renewal form and the following written information:

1.[(a)] Current complete home address and telephone number;

2.[(b)] Current complete name, address, and telephone number of each location in which massage therapy service is provided;

3.[(c)] A list indicating completion of the continuing education units taken during the licensure renewal period as required by 201 KAR 42:110. The list shall:

a.[1-] Itemize the number of clock hours credited for each course; and

b.[2-] Designate the courses that fulfill the three (3) required hours of ethics training; and

4.[(d)] Confirmation that, since the license was issued or renewed, the licensee has not:

a.[1-] Been convicted of a felony;

b.[2-] Had his or her license disciplined and is not currently under disciplinary review in another state; or

c.[3-] Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to [per] KRS 164.772.

(2) A licensee who has been convicted of a crime or who has been disciplined by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall participate in an in-person interview with the board's Application Committee prior to renewal of the license. The purpose of this interview with the board's application committee shall be to find if the licensee met the requirement of good moral character established in KRS 309.358(3) and 335B.040. The interview shall be conducted pursuant to the board's authority under KRS 309.355(3), 309.362(1)(b), and 309.362(4).

(3) If, upon a preliminary review, the board determines that an Application for Renewal shall be denied, notice of the preliminary decision shall be sent to the licensee and the licensee shall have thirty (30) days from the date of the letter to request a hearing with the board. If a request for hearing by the licensee is not received by the board within thirty (30) days of the letter, the licensee shall be found[deemed] to have voluntarily withdrawn his or her Application for Renewal.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent himself or herself[themselves] as a massage therapist in Kentucky.

Section 4. An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

- (1) A completed Application for Renewal form;
- (2) Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:
 - (a) Includes studies in ethics, business practices, science, and techniques related to massage therapy;
 - (b) Have been credited within two (2) years prior to the renewal deadline; and
 - (c) Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and
- (3) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

Section 5. (1) Upon initial licensing, a licensee shall be furnished a wall certificate which shall be displayed at the primary massage therapy service location.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3). At least three (3) of the continuing education hours submitted shall be focused on the area of ethics;
2. Complete the Application for Renewal; and
3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal", ~~August~~**February** 2014~~[2013]~~, is incorporated by reference.

(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 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS HANSEN, Board Chair

APPROVED BY AGENCY: January 27, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Massage Therapy
(As Amended at ARRS, August 7, 2014)**

201 KAR 42:060. Code of ethics and standards of practice for massage therapists.

RELATES TO: KRS 309.355~~(1)~~, (3), 309.362

STATUTORY AUTHORITY: KRS 309.355~~(1)~~, (3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS**

309.355(1) requires the Board of Licensure for Massage Therapy to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board~~of Licensure for Massage Therapy~~ to establish by administrative regulation a code of ethics and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action

under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

- (1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;
- (2) Keep the client well informed of procedures and methods that will be employed during the session;
- (3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;
- (4) Take precautions to do no harm to the physical, mental, and emotional well being of clients or associates;
- (5) Make every reasonable effort to report unlicensed practice of massage therapy to the board;
- (6) Represent his or her educational and professional qualifications honestly;
- (7) Inform clients of the limitations of the licensee's practice;
- (8) Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;
- (9) Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or terminate treatment regardless of prior consent;
- (10) Not initiate or engage in sexual conduct or activities with a client;
- (11) Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;
- (12) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and reasonable expectations of professional behavior;
- (13) Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;
- (14) Conduct all business and professional activities with honesty and integrity;
- (15) Respect the inherent worth of all clients;
- (16) Provide only those services that the licensee is qualified to perform; and
- (17) Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. (1) In the practice of massage therapy, a massage therapist shall:

- (a)~~[(4)]~~ Perform a written or verbal intake interview with the client to ~~evaluate if~~**evaluate if**~~determine whether~~ any contraindications to massage therapy exist and ~~if~~**if**~~whether~~ modifications including pressure, technique, and duration of treatment are ~~applicable~~**applicable**~~[appropriate]~~;
 - (b)~~[(2)]~~ Acknowledge the limitations of, and contraindications for, massage;
 - (c)~~[(3)]~~ Refer the client to other professionals or services if the treatment or service is beyond the massage ~~therapist's~~**therapist's**~~[therapists]~~ scope of practice;
 - (d)~~[(4)]~~ Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;
 - (e)~~[(5)]~~ Provide massage therapy services that meet or exceed the generally accepted practice of the profession;
 - (f)~~[(6)]~~ If a plan of care or treatment is ~~applicable~~**applicable**~~[appropriate]~~, explain the plan to the client, to others designated by the client, and to ~~appropriate~~**appropriate** professionals with client permission;
 - (g)~~[(7)]~~ Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;
 - (h)~~[(8)]~~ Practice massage therapy in sanitary and safe conditions; and
 - (i)~~[(9)]~~ Have the right to refuse to treat any person or part of the body at the licensee's discretion.
- (2) Breast massage. A licensee performing massage of the tissue of the breast shall:
- (a) Obtain the client's informed written consent prior to providing the service;

(b) Maintain proof documenting specialized training in breast massage which addresses breast anatomy, breast pathology, and breast massage technique and which was provided by an approved massage therapy program or board approved continuing education provider;

(c) Inform the client prior to the commencement of the service that this service may be performed through a draping sheet if the client so desires and the licensee shall provide the service through a draping sheet if the client so prefers;

(d) Inform the client prior to the commencement of the service that the client may discontinue the service at any time and the licensee shall honor that election by discontinuing the provision of the service if that request is made;

(e) Keep detailed Subjective Objective Analysis Plan[SOAP] notes for the service such as[including but not limited to] notes related to all emotional factors that the client reports to the licensee which might impact the client's suitability for the service and the precautions that the licensee has taken to ensure that the service is provided in a[an-appropriate] manner accounting for[given] those emotional factors; and

(f) Refrain from an act or statement which the client may[might subjectively] construe as being sexual in nature.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage session.

(1) Documentation shall not be required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;

2. Date of the session; and

3. Pertinent medical history, including:

a. Client sensitivities and allergies;

b. Medical diagnoses, if available, and the source of the diagnosis;

c. Contraindications; and

d. Medications as disclosed by the client;

(b) Progress notes signed by the massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;

2. Objective information including any observations and objective testing, if applicable;

3. Ongoing assessments, if applicable;

4. Actions taken by the massage therapist; and

5. The client response to massage therapy treatment; and

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;

2. Frequency and duration of treatment;

3. Referral to other professionals, if indicated;

4. Client self-help education and instruction; and

5. The goals or desired outcome of the treatment.

THOMAS HANSEN, Board Chair

APPROVED BY AGENCY: January 27, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Massage Therapy
(As Amended at ARRS, August 7, 2014)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(1), (3), 309.358(4), 309.363(1), 309.3631

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(4) requires the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. This administrative regulation establishes the definitions of supervision and qualifying supervisors and establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage theory, technique, or practice.

(2) "Clinic" or "clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, and who is responsible for assigning the student to a[an-appropriate] clinical setting, supervising[supervision of] student performance through regular consultation with the student, and evaluating student achievement of clinical course objectives.

(4) "Externship" means a course offered by an approved program that:

(a) Has a syllabus that describes objectives and evaluations; and

(b) Is over and above the 600 supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a business.

(6) "Supervision" means the process of verifying attendance, assigning work, consulting with the student, evaluating student performance, and being available for emergency assistance.

Section 2. (1) A program [applying for a Certificate of Good Standing for a Massage Therapy Training Program] shall file a completed, signed, and dated Application for a Certificate of Good Standing for a Massage Therapy Training Program and required documentation with the board, meeting the requirements established[set forth] in KRS 309.363(1), (a), (b), and (c). Documentation shall include:

(a)[(1)] A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes;

(b)[(2)] A curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5 showing clock hours for each of the required subjects;

(c)[(3)] A listing of instructional staff and their qualifications, as described in KRS 309.363(1)(c)1., 2., and 3. including:

1.[(a)] Documentation of current licensure of massage instructors; and

2.[(b)] A resume, curriculum vitae,[CV] or PE-11 form, which is incorporated by reference in 791 KAR 1:010, for all instructors showing the specific qualifications for teaching an adjunctive or science course;

(d)[(4)] A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure;

(e)[(5)] A copy of the program or school catalogue;

(f)[(6)] Documentation of accreditations held by the program or school offering the program; and

(g)[(7)] A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to

licensure by the board.

(2) After a preliminary determination is made by the board after an initial review, an applicant that has been preliminarily denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B[application] if the applicant notifies the board within thirty (30) days that it elects to take advantage of that opportunity for a hearing.

Section 3. (1) A Certificate of Good Standing may be renewed upon:

(a) [(4)] submission of the Application for ~~[Renewal of]~~ a Certificate of Good Standing ~~off[or]~~ a Massage Therapy Training Program Renewal Short Form or Long Form with the information required by this administrative regulation to the board on or before the anniversary date of issue of the certificate.[(5)]

(b) Submission of the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Long Form shall include:

1. The current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

2. The name and contact information of the owner;

3. Documentation of the items required in Section 2 of this administrative regulation if these have changed since the program's initial application or last renewal;

4. A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates; and

5. A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx and NCBTMB Exam over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

(c) Submission of the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form shall include documentation of changes to any of the following items if these have changed since the program's initial application or last renewal:

1. The contact information for the school;

2. The instructional staff;

3. The qualifications of an instructor;

4. The curriculum;

5. The massage therapy programs offered; or

6. The program's accreditation.

(d) Each Short Form shall include updated information on student completion, examination pass rates, licensure rates, and placement rates.

(e) Submission of documentation with the Short Form may include:

1. The[(2)] current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

2. The[(e)][(3)] current listing of instructional staff and their qualifications as described in KRS 309.363(1)(c)1., 2., and 3., with attached documentation of qualifications of new instructors;

3. [(d)][(4)] A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5;

4. [(e)][(5)] A curriculum statement for new programs of massage therapy added to the school's original offering, such as an associate's[Associates] degree program, if the new program may be used to meet initial qualifications for licensure;

5. [(f)][(6)] A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates;

6. [(g)][(7)] Documentation of accreditation reviews and renewals, if held; and

7. [(h)][(8)] A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx and NCBTMB Exam over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good

standing.

(2) After a preliminary determination is made by the board after an initial review, an applicant seeking renewal that has been preliminarily denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B[application] if the applicant notifies the board within thirty (30) days that it elects to take advantage of that opportunity for a hearing.

Section 4. Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage shall conspicuously include the respective words "student massage" in all promotional materials, and shall conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with at least three (3) years of experience in the practice of massage therapy and who is available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor, and applicable[appropriate] goals for improvement in areas such as customer service, technique, body mechanics, and draping shall be established[set] according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records shall be maintained at the school and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(d) and the Standards for Documentation established in 201 KAR 42:060, Section[Sections] 3.[and 2(4), and] Record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) A program offering an externship course shall have a written agreement signed by the institution's representative[institution] or program director and the externship site personnel that clearly defines the responsibilities of the onsite supervisor, the clinical coordinator, and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course, if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.358(4)[309.363(1)(b)].

(6) A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) Externship sites shall have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, or business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A student session at an externship site may occur with the site supervisor available by phone if the client of the session is on the staff of the externship site or is another extern, and a member of the professional staff is on premises for emergency assistance.

(8) Externship client records shall be maintained at the externship site and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(d) and the Standards for Documentation established in 201 KAR 42:060, Section[Sections] 3.[and 2(4), and] Record of payment shall be available to the client upon request.

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

(a) "Application for a Certificate of Good Standing for a

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Massage Therapy Training Program", February 2014~~[April 2013]~~~~;~~~~and]~~

(b) "Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form", August~~[February]~~ 2014; ~~and~~

(c) "Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Long Form", August~~[February]~~ 2014~~[2013]~~.

(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, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

DENISE LOGSDON, Board Chair

APPROVED BY AGENCY: January 30, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Massage Therapy (As Amended at ARRS, August 7, 2014)

201 KAR 42:110. Continuing education requirements.

RELATES TO: KRS 309.355, 309.361

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. KRS 309.361 identifies the requirements for continuing education and prescribes the types of courses required during the renewal period. This administrative regulation establishes the procedures and standards for submitting documentation to meet the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "ABMP" means the Associated Bodywork and Massage Professionals.

(2) "AMTA" means the American Massage Therapy Association.

(3) "AOBTA" means the American Organization for Bodywork Therapies of Asia.

(4) "Board" is defined by KRS 309.350(1).

(5) "CE hour" means continuing education hours consisting of fifty (50) minutes of an organized learning activity that is either didactic or clinical experience and shall exclude meals, breaks, and registration.

(6) "Competency" means the study, development, and demonstration of knowledge and skills in meeting professional expectations as a massage therapist.

(7) "Continuing education" means participation in an approved program or learning experience that is designed to facilitate continued competency including ethical and legal practice in the therapeutic massage and bodywork profession through participation in a learning process that enhances the licensee's current knowledge, skills, and abilities in the profession.

(8) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(9) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(10) "Provider" means an organization, entity, or individual that has met the requirements of the board to provide educational courses that are designed to ensure continued competence in the practice of massage therapy.

(11) "Self-paced learning" means a course designated for an individual to learn at his or her own pace and is often referred to as correspondence or home study with testing or an evaluation process.

Section 2. Accrual of CE Hours; Computation of Accrual. (1) A licensee shall accrue a minimum of twenty-four (24) continuing

education hours during a two (2) year licensure period for renewal of a license, beginning on the date of license issue.

(2) A minimum of three (3) of the twenty-four (24) hours required by subsection (1) of this section shall be accrued in the field of professional ethics.

(3) All hours shall be in or related to the practice [field] of massage therapy.

(4) Coursework related to therapeutic techniques conducted on animals shall not be approved for continuing education credit.

Section 3. Acquisition of CE Hours. (1) CE hours applicable to the renewal of a license shall be directly related to the professional growth and development of massage therapy practitioners. CE hours may be earned by completing any of the [following] educational activities described in this subsection.~~[-]~~

(a) Courses Not Requiring Board Review and Approval. Courses from the following sources shall be ~~[deemed]~~ relevant to the practice of massage therapy and shall be approved if the course is in or relates to massage therapy and does not violate any of the prohibitions contained in this administrative regulation:

1. Courses and Learning Opportunities approved by the NCBTMB;

2. Courses offered by the AMTA and its state affiliates;

3. Courses approved by the NCCAOM;

4. Courses offered by the AOBTA and its state affiliates;

5. Courses offered by the ABMP;

6. Kentucky board approved massage therapy programs of instruction or massage therapy programs duly licensed to operate in other states; or~~and]~~

7. Relevant academic courses completed in a degree-granting college or university accredited by an agency that is approved by the Council on Higher Education Accreditation (CHEA).

~~[b)]~~~~(2)]~~ Programs Requiring Board Review and Approval. All other programs, including self-paced learning~~[home study]~~ courses and in-service training provided by organizations, educational institutions, or other service providers not listed in paragraph (a) of this subsection ~~[(1)(a) of this section]~~, and programs or academic courses presented by the licensee shall require approval by the board.

~~(2)]~~~~(3)]~~ Presenters of relevant programs or academic courses may earn double continuing education credit for the length of presentation time, not to exceed twelve (12) hours per renewal cycle.

~~(3)]~~~~(4)]~~ Credit shall not be issued for repeated instruction of the same course.

~~(4)]~~~~(5)]~~ A licensee shall not receive credit for completing the same CE course within the two (2) year renewal period.

Section 4. Documentation of CE Hours. (1) A licensee shall furnish the following information regarding completion of the appropriate number of CE hours for the current renewal period:

(a) Name of course, date, and the author or instructor;

(b) Name of providing organization and the location of the course;

(c) The number of hours attended;

(d) Provider number;

(e) Provider name and telephone number for board verification;

(f) Official transcripts with a raised seal showing academic credits and grades awarded if courses are received from a university, college, or vocational technical adult education facility; and

(g) Documentation of completion, if requested by the board.

(2) A licensee who supplies false information to the board in order to comply with the CE requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of license.

Section 5. Procedures for Preapproval of Continuing Education Courses. (1) An entity seeking to obtain approval of a continuing education course prior to its offering shall complete a Continuing Education Program Application and submit it to the board at least sixty (60) days in advance of the commencement of the course, stating the:

(a) Type of learning activity;

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- (b) Subject matter;
- (c) Names and qualifications of the instructors;
- (d) Number of continuing education hours offered; and
- (e) Statement of how the CE course relates to massage therapy.

(2) A CE activity shall be preapproved if the activity being presented:

- (a) Is an organized course of learning;
- (b) Pertains to subject matters that integrally relate to the practice of massage therapy;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by an individual with approved educational training or experience.

(3) The board shall review preapproval requests meeting the board's deadline at the board meeting immediately following the submittal and receipt of all required materials. An entity shall submit a preapproval request, and all required materials shall be received by the board at least one (1) business day before the board meeting. The board may defer a preapproval request to the next board meeting if the request did not meet the deadline established in this subsection.

Section 6. Responsibilities and Reporting Requirements of Licensees. A licensee shall:

- (1) Identify the licensee's own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills, and attitudes;
- (2) Select approved activities by which to earn CE hours;
- (3) Maintain records of CE hours, for a period of two (2) years from the date of renewal; and
- (4) Document attendance and participation in a CE activity by providing official transcripts, copies of certificates, or verification of completion, if requested.

Section 7. Carry-over of CE Hours. (1) A maximum of twelve (12) CE hours may be carried over into the next renewal period.

(2) A licensee shall maintain records related to carry-over continuing education hours and submit those continuing education hours to the board if the licensee elects to utilize those hours for the fulfillment of the continuing education requirement for the current renewal period.

(3) A continuing education course shall only be used for the fulfillment of the continuing education requirement for a single renewal period and shall not be subdivided for utilization in multiple renewal periods.

Section 8. Appeal Procedure If Approval for CE Hours is Denied. [(4)] If an application for approval of CE hours is disapproved, the licensee may request reconsideration by the board. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of the CE hours.

Section 9. Audit of CE Activities. The board may audit the documentation of a licensee's CE hours for the current renewal period. If notified by the board, the licensee shall respond to the audit within thirty (30) days of the date of the request.

Section 10. Waiver or Extension of Continuing Education. (1) The board shall, in individual cases involving medical disability, illness, undue hardship, active military service, or other similar extenuating circumstance that precludes[preclude] the individual's completion of the requirements, waive CE requirements or grant an extension of time within which to fulfill the requirements if the board receives:

- (a) A written request for waiver or extension of time; and
- (b) 1. Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or
2. [(c)] Documentation to support the waiver.
- (2) A waiver of the minimum CE requirements or an extension of time within which to fulfill the CE requirements may be granted by the board for a period not to exceed one (1) calendar year. If the

circumstance extends beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application", August[February] 2014[October 2005], is incorporated by reference.

(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 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS HANSEN, Board Chair

APPROVED BY AGENCY: January 27, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, P.O. Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (As Amended at ARRS, August 7, 2014)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(a)
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.334(2)(a) requires the board to promulgate administrative regulations to establish the duties of the apprentice diabetes educator supervisor. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The apprentice diabetes educator shall:

1. Interact with the supervisor no less than two (2) hours per month in any month in which the apprentice accumulates work experience to discuss the apprentice diabetes educator's work with clients; and

2. Review the apprentice diabetes educator's provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly while being physically present in the same room.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the Application for Licensure, Form DE-01.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

(4) The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and providing[provide] direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing [appropriate] resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation Requirements. The documentation required by the Supervised Work Experience Report, Form DE-05 shall be maintained for a period of five (5) years and provided to

the board at the request of the board.

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

(a) "Application for Licensure", Form DE-01, 08/2014[06/2014][(06/2013)]; and

(b) "Supervised Work Experience Report", Form DE-05, 06/2014[(06/2013)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, August 7, 2014)

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

RELATES TO: KRS 309.331, 309.334, 309.335

STATUTORY AUTHORITY: KRS 309.331(1), 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal and reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit [the following]to the board by November 1 of each year:

(a) A completed Renewal Application, Form DE-02;

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and

(c) The renewal fee as established in 201 KAR 45:100[45:110].

(2) If a license is not renewed by January 30 of the new licensure year, it shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensee:

(a) Paying the required fees established in 201 KAR 45:100[45:110]; and

(b) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his or her license in inactive status by submitting written notice to the board prior to November 1.

(2)(a) An individual with an inactive license shall not be permitted to practice diabetes education while the license is inactive.

(b) A licensee may remain in inactive status for a maximum of five (5) years.

(3)(a) During the period of inactive status, the licensee shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130.

(b) Upon the licensee's request for licensure reactivation, the licensee shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each

year the license was inactive.

(4)(a) An individual shall submit in writing a request to the board to be placed back in active status.

(b) The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Apprentice Renewal Application, Form DE-04[DE-02];

(b) Proof of the required continuing education established in 201 KAR 45:130; and

(c) The renewal fee established in 201 KAR 45:100.

(2)(a) If a permit is not renewed by January 30 of the new licensure year, it shall automatically expire, and the apprentice diabetes educator shall reapply for a permit as established in KRS 309.334.

(b) Work experience accumulated shall not carry over between permits.

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

(a) "Renewal Application", Form DE-02, 06/2013; and

(b) "Apprentice Renewal Application", Form DE-04, 08/2014[06/2014], is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(As Amended at ARRS, August 7, 2014)

201 KAR 45:170. Application procedures.

RELATES TO: KRS 309.331, 309.334, 309.335, 309.336

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(c), 309.335, 309.336(2)(b)[, Chapter 310, 311, 314, 315, 319, 319A, 320, 327, 335]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1) requires an applicant for licensure as a licensed diabetes educator to file an application as provided by the board and to show successful completion of a course or program as determined by the board. KRS 309.334(2)(c) requires the board to establish additional requirements to apply for an apprentice[licensure as a master licensed] diabetes educator permit, and KRS 309.336(2)(b) requires the board to establish additional requirements to apply for licensure as a master licensed[an apprentice] diabetes educator[permit]. This administrative regulation establishes application procedures for licensed diabetes educators, master licensed diabetes educators, and apprentice diabetes educators.

Section 1. Licensed Diabetes Educator Application Procedures. An applicant for licensure as a licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01, incorporated by reference in 201 KAR 45:110;

(2) Evidence to the board showing successful completion of one (1) of the following:

(a) A board-approved course as specified in 201 KAR 45:180;

(b) The credentialing program of the American Association of

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Diabetes Educators or the National Certification Board for Diabetes Educators; or

(c) An equivalent credentialing program pursuant to KRS 309.335(1); and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 2. Master Licensed Diabetes Educator Application Procedures. An applicant for licensure as a master licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01;

(2) Proof of completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators in Board Certified Advanced Diabetes Management or as a Certified Diabetes Educator; and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 3. Apprentice Diabetes Educator Application Procedures. An applicant for an apprentice diabetes educator permit shall submit to the board:

(1) A completed Application for Apprentice Diabetes Educator Permit, Form DE-03;

(2) Payment of the licensure fee as established in 201 KAR 45:100; and

(3) Proof of an active license or certification in good standing as at least one (1) of the following:

(a) American College of Sports Medicine Certified Clinical Exercise Specialist or Registered Clinical Exercise Physiologist;

(b)1. Certified social worker or licensed clinical social worker pursuant to KRS Chapter 335; and

2. The applicant shall also have at least two (2) years of experience in a health profession;

(c) Dietitian pursuant to KRS Chapter 310;

(d) Health educator holding active certification as a master certified health education specialist with the National Commission on Health Education Credentialing;

(e) Nutritionist pursuant to KRS Chapter ~~310~~**[311]**;

(f) Occupational therapist pursuant to KRS Chapter 319A;

(g) Optometrist pursuant to KRS Chapter 320;

(h) Osteopath pursuant to KRS Chapter 311;

(i) Pharmacist pursuant to KRS Chapter 315;

(j) Physical therapist pursuant to KRS Chapter 327;

(k) Physician pursuant to KRS Chapter 311;

(l) Physician assistant pursuant to KRS Chapter 311;

(m) Podiatrist pursuant to KRS Chapter 311;

(n) Psychologist pursuant to KRS Chapter 319;

(o) Registered nurse pursuant to KRS Chapter 314; or

(p) A license or certification from a state or the District of Columbia equivalent to one (1) of the licenses or certifications listed in this subsection.

(4) The board shall not consider an applicant for an apprentice diabetes educator permit who does not hold an active license or certification as listed in subsection (3) of this section.

(5) An applicant for an apprentice diabetes educator permit shall include the Supervised Work Experience Report, Form DE-05, incorporated by reference in 201 KAR 45:110.

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

(a) "Application for Licensure", Form DE-01, 06/2014; and

(b) "Application for Apprentice Diabetes Educator Permit", Form DE-03, 08/2014, is incorporated by reference[06/2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol

Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (As Amended at ARRS, August 7, 2014)

201 KAR 45:180. Diabetes Education Courses.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331~~(1)~~, 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331~~(1)~~ requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1)(b)1. requires the board to promulgate administrative regulations specifying requirements for the board-approved course in diabetes education. This administrative regulation establishes the requirements and procedures for the board-approved course in diabetes education.

Section 1. The American Association of Diabetes Educators Core Concepts Course shall constitute a board-approved course in diabetes education.

Section 2. A person may petition the board to approve another course in diabetes education that is substantially equivalent to the American Association of Diabetes Educators Core Concepts Course **by submitting to the board a completed Application for KBLDE Board Approved Course, Form DE-07. The application form shall be accompanied by:**

(1) A thorough course description;

(2) A statement of the learning objectives;

(3) A statement of the target audience;

(4) The content focus of the course;

(5) A detailed agenda for the activity;

(6) The number of contact hours requested;

(7) The qualifications required for presenters; and

(8) A sample of the certificate of completion awarded to successful attendees.

Section 3. Incorporation by Reference.

(1) "Application for KBLDE Board Approved Course", Form DE-07, 08/2014 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: June 12, 2014

FILED WITH LRC: June 12, 2014 at 2 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS, August 7, 2014)

503 KAR 3:005. Definitions for 503 KAR Chapter 3.

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS ~~15A.070(1), (5)~~**[Chapter 13A, 15A.160]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~15A.070(1) requires~~**[15A.070 authorizes]** the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. **KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations.** This administrative regulation

~~establishes~~~~[provides]~~ definitions ~~for~~~~[of certain terms used in]~~ 503 KAR Chapter 3~~, which pertain to such training~~.

Section 1. Definitions.~~[As used in this administrative regulation:]~~

(1) "Branch manager" means the manager of a branch in the training division of the Department of Criminal Justice Training or his designee.

(2) "Class coordinator" means the department staff member responsible for the day-to-day supervision of a class of ~~recruits~~~~[basic trainees]~~ or his designee.

(3) "Commissioner" means the Commissioner of the Department of Criminal Justice Training or his designee.

(4) "Department" means the Department of Criminal Justice Training.

(5) "Director" means the director of the training division of the department or his designee.

(6) "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

~~(7)~~ "Instructor" means the department staff member or other person in charge of a particular training activity for a class of trainees or basic recruits.

~~(8)~~~~(7)~~ "Legal officer" means the general counsel of the department or his designee.

~~(9)~~~~(8)~~ "Recruit" means a person attending the basic training course conducted by the basic training section of the department.

~~(10)~~~~(9)~~ "Section supervisor" means the supervisor of the basic training section of the department or his designee.

(11) "Submit" means mail, transmit by facsimile, or transmit via electronic means and is completed upon receipt by the person to whom it was directed.

~~(12)~~~~(10)~~ "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the department.~~(11)~~ "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

~~(12)~~ "Submit" includes mail, transmit by facsimile, or transmit via electronic means and is completed upon receipt of the person to whom it was directed.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, August 7, 2014)**

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

RELATES TO: KRS 15A.070(1)

STATUTORY AUTHORITY: KRS 15A.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms, Operator's License, and Criminal History

Records Check Required. (1) A recruit shall:

(a) Provide the uniforms required in Section 6(8) of this administrative regulation; and

(b) Present a valid motor vehicle operator's license to participate in the basic training course.

(2) The recruit's employing agency shall submit Form 151[a letter] to the department stating that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the recruit attends law enforcement basic training; and

(b) The recruit is not prohibited by state or federal law from:

1. Possessing a firearm; or

2. Accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(3) If the recruit has been in precertified status, pursuant to KRS 15.386(1), for less than ninety (90) days before arriving for law enforcement basic training, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. If a recruit is not qualified to participate in the basic training course under subsection (3) of this section, he shall:

(a) Be removed from basic training by the:

1. Commissioner;

2. Director;

3. Branch manager; or

4. Section supervisor; and

(b) Receive no credit for the part of the course he has completed.

(2) If a recruit is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) A recruit shall be considered unqualified if he:

(a) Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements in KRS 15.382 and 503 KAR Chapter 3, including Form 151~~[the criminal history letter]~~ required in Section 1(2) of this administrative regulation;

(b) Is not presently employed as a law enforcement officer and has not received special permission to attend;

(c) Arrives at the beginning of basic training physically unable to participate because of:

1. Physical injury;

2. Being under the influence of alcohol or drugs (prescription or illegal); or

3. Failure of the physical training entry requirements as found in 503 KAR 1:110 if the recruit is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to 15.404;

(d) Has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course; or

(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;

(4) Agency's request: The department shall remove a recruit from basic training upon the department's receipt of a written request from the recruit's law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff members shall conform to the Executive Branch Code of Ethics (KRS Chapter 11A~~[11A.040]~~).

Section 4. Penalties for Misconduct. (1) The~~[following]~~ penalties established in this section shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit shall not reapply for

admission to the department's basic training course for two (2) years from the date of expulsion.

(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.

(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.

(d) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(e) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(f) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties in Sections 6 and 7 of this administrative regulation which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties in Sections 6 and 7 of this administrative regulation shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, including the department's use of redacted records for accreditation purposes, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements established in this section.[:] (1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension, or expulsion.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation, or suspension, or expulsion.

(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A

recruit's hair shall be clean and neat and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) Regardless of amount, a recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the recruit is granted permission to stay beyond the normal Friday evening checkout. "Attending a basic training course" shall not include the weekend period during which recruits check out of the dormitory and return to their homes. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Testing may be randomly requested of all members of a basic training class or all dormitory residents. If a test is requested, a recruit shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed~~[unlawfully possessed]~~ intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.1-400~~[224.01-400]~~), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully possessed~~[unlawfully possessed]~~ weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity if appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, or engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each recruit at the beginning of basic training. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;

2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;

3. Worn over a clean white or department-issued tee-shirt, visible at the neck; and

4. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) Jewelry.

1. The recruit may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Optional clothing may be worn during a training activity if authorized by the class coordinator.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence if possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused

tardiness: verbal warning or written reprimand.

(b) All absences from basic training shall be approved by the section supervisor or branch manager.

(c) If a recruit is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the class coordinator and class administrative specialist. Failure to make up the work shall be deemed a failure of that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not possess any electronic devices during scheduled training hours unless approval~~[written permission]~~ is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A recruit shall not use tobacco products during, or bring food or drink into a training activity~~[unless so permitted by the training staff]~~. Penalty: verbal warning or written reprimand.

(d) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(e) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A recruit shall observe "lights out" thirty (30) minutes past the designated curfew. This time may be temporarily moved up or extended by the branch manager or designee based upon training or testing activities the following day. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(f) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(g) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the class coordinator. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:

(a) For nonperformance of duties, including conduct violations; or

(b) If the coordinator determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at least three (3) times throughout the current KLEC-approved basic training course[six (6) week intervals] and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.~~;~~

(2) Immediate notice of specific nonperformance or lack of progress.~~;~~

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub; or
5. Other establishment with the primary purpose of serving

alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.~~;~~

(4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.~~;~~

(5) Notice if a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.~~;~~

(6) Notice if a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or if a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.~~;~~ and~~;~~

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a recruit unless charges have first been brought by the legal officer. (1) The~~following~~ department staff members listed in this subsection may have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) If a charge is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty if[should] the recruit is[be] found guilty of the conduct violation.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor or his or her designee receives a complaint of or witnesses apparent misconduct, he or she shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct

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requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

(a) File charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date, and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit; and

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, August 7, 2014)**

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

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS ~~15.590~~ 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the telecommunications (public safety dispatch) academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check Required. (1) A trainee shall wear a uniform, approved by the department, while participating in the academy.

(2) The required uniform shall consist of:

(a) Men:

1. Polo shirt with DOCJT logo, supplied by the department;

2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;

3. Black belt;

4. Black socks above the ankles. Footies shall not be worn; and

5. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform; ~~or~~ and

(b) Women:

1. Polo shirt with DOCJT logo, supplied by the department;

2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn;

3. Black belt;

4. Black socks or hose above the ankles. Footies or anklets shall not be worn; and

5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(3) The following may be worn with the uniform:

(a) A dark blue or black jacket or sweater;

(b) A black undershirt or turtleneck; and

(c) The Department of Criminal Justice Training cap.

(4) The trainee's employing agency shall submit Form 151[a letter] to the department stating that:

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends the Academy; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(5) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the Academy, an additional criminal records check shall

not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties established in this section shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except if required by law, a trainee's training file shall not be available for access except by:

1. The department, including the department's use of redacted records for accreditation purposes;

2. The trainee; or

3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the

academy shall meet the following conduct requirements established in this section:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee, or other department trainee or guest. Penalty: verbal warning, written reprimand, or suspension.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair, male or female, shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) Jewelry.

1. A trainee may wear one (1) ring per hand. A wedding ring and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(d) A trainee shall:

1. Practice good hygiene at all times; and

2. Not wear excess perfume, cologne, or other scented body products.

(e) ~~[(d)]~~ Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while enrolled in the academy. Penalty: written reprimand, loss of privileges, suspension, or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, or other department staff observes an unlawfully possessed~~[unlawfully-possessed]~~ intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS ~~224.1-400~~224.01-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of

privileges, suspension, or expulsion.

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an ~~unlawfully possessed~~ weapon or other dangerous device, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting, engage in violent, tumultuous or threatening conduct, or engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each trainee at the beginning of the academy training. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Academy activities - uniforms.

(a) A trainee shall wear the uniform required by Section 1 of this administrative regulation. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed, and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the right shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee's absence is excused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent. The time period for reenrollment in a subsequent class

shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(f) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction, if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity unless so permitted by the branch manager, training director, or commissioner. Penalty: verbal warning or written reprimand.

(d) A trainee shall not engage in conduct which creates or may create a risk of injury to others.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(13) Residence hall.

(a) During the academy a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, or loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral, or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As

trainees of the Department of Criminal Justice Training, Telecommunications (Public Safety Dispatch) Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will, or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of public safety. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - public safety.

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(3) All trainees shall report honor code violations to the class coordinator.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff, or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at the completion of the academy and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social ~~and/~~ interpersonal skills, and appearance.~~;~~

(2) Immediate notice of specific nonperformance, misconduct, or lack of progress; ~~and/.~~

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking an agency-owned or assigned vehicle at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a complaint by a citizen, student, or department staff member.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer. (1) The~~following~~ department staff members listed in this subsection may~~shall have the authority to~~ impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and

may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) If a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses/a witness's apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.
(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, August 7, 2014)**

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

RELATES TO: KRS 15.380(1)(c), KRS 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the Certified Court Security Officers academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check Required. (1) A trainee shall acquire and wear the designated uniform of his or her employing agency while participating in the academy. If an agency has not adopted a uniform, male trainees shall wear a shirt and tie and female trainees shall wear business casual for women. Penalty: verbal warning, written reprimand, loss

of privileges, or probation.

(2) A uniform shall be:

(a) Clean, pressed, and in good condition; and

(b) Appropriately sized to fit the trainee and not excessively loose, baggy, or tight. ~~Penalty: -;~~

~~[(c)] Worn over a clean white or department-issued tee-shirt, visible at the neck; and~~

~~(d) Worn with a wide black police-type belt, clean police-type footwear, brown or black socks, and when outdoors, a department cap.~~

~~[(e)] The penalty for violation of this subsection shall be a verbal warning or written reprimand.~~

(3) Jewelry.

(a) The trainee may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

(b) Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(c) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

~~(4) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.~~

~~(5) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.~~

~~(6) Optional clothing may be worn during a training activity if authorized by the class coordinator or an instructor.~~

~~[(7)] The trainee's employing agency shall submit Form 151[a letter] to the department stating that:~~

(a) A criminal history check, in accordance with 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends the Academy for Certified Court Security Officers; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(8) If the criminal history check required by KRS 15.3971(1)(e) and (k) has been performed within ninety (90) days before the trainee arrives for the academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If the Department discovers that a trainee does not meet the Certified Court Security Officer qualifications in KRS 15.3971, he shall:

(a) Be removed from the academy by the:

1. Director;

2. Branch manager; or

3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy he may request an administrative hearing, conducted in accordance with the requirements of KRS Chapter 13B, within thirty (30) days of the removal. The request for an administrative hearing shall be in writing.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The ~~following~~ penalties established in this section shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties that may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties that may be imposed for the third or subsequent violation.

(3) Notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice if a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except if required by law, a trainee's training file shall not be available for access except by:

1. The department, including the department's use of redacted records for accreditation purposes;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the ~~following~~ conduct requirements established in this section.[-]

(1) General conduct - chain of command. All communications shall follow the chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning or written reprimand, loss of privileges, probation, or suspension; and[-]

(b) Refrain from:

1. Engaging in sexual activity on Department property;
2. Physical contact with another person that is inappropriate in a professional training setting, for example, hugging or kissing;
3. Vulgarity;
4. Sexual harassment;
5. Rudeness;
6. Confrontation; and
7. Other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest.

[8.] Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;
2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and
3. Shall not wear a beard unless he receives permission from the department, based upon[-]

a.-] a written request from the trainee's agency[-; and

~~b. A showing of good cause].~~

(b) A trainee's hair shall:

1. Not be unkempt; and
2. Be kept above the collar.

(c) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) Regardless of amount, a trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the trainee is granted permission to stay beyond the normal Friday evening checkout.

(b) "Attending a basic training course" shall not include the weekend period during which trainees check out of the dormitory and return to their homes.

(c) A trainee shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances.

(d) A trainee shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense.

(e) Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director, or commissioner has a reasonable suspicion that the trainee has violated the provisions of this section.

(f) Testing may be randomly requested of all members of an academy class or all dormitory residents. If a test is requested, a trainee shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater.

(g) If a trainee has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional.

(h) Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(i) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed~~unlawfully possessed~~ intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) Due to the accidents that have occurred in the training setting in other jurisdictions, a trainee shall not possess the following on property used by the department except under circumstances specifically authorized by the department:

1. Deadly weapons as defined in KRS 500.080;
2. Ammunition;
3. Destructive devices as defined in KRS 237.030;
4. Booby trap devices as defined in KRS 237.030;
5. Hazardous substances as defined in KRS 224.1-

400~~224.01-512~~;

6. Fireworks; or

7. Instruments used by law enforcement for control purposes, such as batons, stun guns, Mace, and pepper spray.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs that may require the

expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor.

(c) Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(d) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes a weapon or other dangerous device possessed in violation of this subsection, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor, or violation, while enrolled in the academy.

(b) Engage in conduct that creates a danger or risk of danger to the trainee or another;

(c) Possess obscene material as defined in KRS 531.010;

(d) Engage in conduct that is annoying;

(e) Engage in fighting or in violent, tumultuous, or threatening conduct;

(f) Engage in sexual harassment; or

(g) Engage in conduct that is offensive.

[(h)] Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(8) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty for unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension. Penalty for unexcused tardiness: verbal reprimand or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;

2. Illness of an immediate family member;

3. Death of an immediate family member;

4. Necessity of trainee's agency; or

5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee is absent for a combined period of more than ten (10) percent of the academy, he or she may be required to return to a later class in order to complete all coursework.

(9) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(10) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless approval~~written permission~~ is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity~~[unless so permitted by the training director or commissioner]~~. Penalty: verbal warning or written reprimand.

(d) A trainee shall not engage in conduct that creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(11) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: suspension or expulsion.

(12) Residence hall.

(a) During the academy a trainee shall reside in the residence hall designated by the department. Upon request of the head of the trainee's agency, exceptions shall be approved by the training director or his designee. Costs incurred as a result of an approved request shall not be the responsibility of the Department of Criminal Justice Training.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning, written reprimand or loss of privileges.

(f) A hot plate shall not be used in the residence hall. Penalty: verbal warning, written reprimand or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Certified Court Security Officers Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and

accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the certified court security officers academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the sheriff of the trainee's agency:

(1) Immediate notice of specific nonperformance, misconduct, or lack of progress; ~~and~~ []

(2) Immediate notice of any off-campus activity that reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer. (1) The ~~following~~ department staff members ~~listed in this subsection may~~ **shall have the authority to** impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal from the Academy Pending an Initial Appearance Before the Commissioner. (1) ~~If~~ **When** a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee.

1. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated.

2. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee that he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges.

(4) If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(5) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee that he shall answer the charges by:

1. Admitting the charges are true;

2. Denying the charges are true but waiving a hearing; or

3. Denying the charges are true and requesting a hearing.

(c) The commissioner shall advise the trainee of the penalty that shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing, notice of which shall be provided in writing to the trainee.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be

dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Incorporation by Reference. (1) DOCJT Form 151, "Applicant Confirmation", 05-08-14, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: June 10, 2014

FILED WITH LRC: June 10, 2014 at 11 a.m.

CONTACT PERSON: Dana M. Todd, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, August 7, 2014)**

804 KAR 11:040. Growlers.

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 sale of alcoholic beverages. This administrative regulation allows a licensee that holds a retail malt beverage license to sell growlers.

Section 1. **Definition.** "Growler" means a refillable, resealable vessel no larger than two (2) liters with a flip-top or screw-on lid into which a malt beverage is prefilled, filled, or refilled for off-premises consumption. "Growler" shall not mean a vessel of similar size or capacity that is primarily used for the storage of other non-alcoholic liquids.

Section 2. The holder of a license permitting malt beverage package sales for off-premise consumption ~~may/shall be permitted to~~ sell filled growlers at retail for off-premise consumption if:

(1) The growler is cleaned and sanitized by the licensee or its employee prior to being filled as prescribed in Section 3 of this administrative regulation;

(2) The growler is filled and securely resealed by the licensee or an employee at least twenty (20) years old before being removed from the ~~premises~~**[premise]**;

(3) The growler has a label affixed to it, legibly stating:

(a) The brand name of the product;

(b) The name and address of the brewer or bottler;

(c) The class of product (beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);

(d) The name and address of the licensee that filled or refilled the growler;

(e) The following statement, "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."; and

(f) The alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. 16.20 through 16.22; **and**

(4) The label is affixed to the vessel by:

(a) Neck hanger;

(b) Adhesive;

(c) String; or

(d) Other means.

Section 3. Cleaning, Sanitizing, Filling, and Sealing. (1) Filling

and refilling growlers shall only occur at the request of a customer.

(2) **Except as provided by subsection (3) of this section,** prior to ~~filling or~~ refilling a growler, the growler and its cap shall be cleaned and sanitized by the licensee or its employee by:

(a) Manual washing in a three compartment sink. **The licensee or its employee shall:**

1. Prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;

2. Empty residual liquid from the growler to drain, but not into the cleaning water;

3. Clean the growler and cap using detergent and water exceeding 110 degrees Fahrenheit, **a temperature compliant with Kentucky Department for Public Health standards in 902 KAR 45:005,** or the temperature specified on the detergent manufacturer's label instruction. Detergent shall not be fat- or oil-based;

4. Remove any residues on the interior and exterior of the growler and cap;

5. Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot or from the tub as long as the water for rinsing shall not be stagnant ~~and, but~~ shall be continually refreshed;

6. Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of the chemical; and

7. A test kit or other device that accurately measures the concentration of MG/L of chemical sanitizing solutions shall be provided and be readily accessible for use; or

(b) Mechanical washing and sanitizing machine.

1. Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data place affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;

2. Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;

3. Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and

4. The machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.

(3) ~~Notwithstanding~~**Except as provided in** subsection (2) of this section, a growler may be filled or refilled without cleaning and sanitizing the growler by:

(a) Filling or refilling a growler with a tube as referenced in subsection (4) of this section;

1. Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;

2. A container of liquid food grade sanitizer shall be maintained for ~~no more than ten (10)]~~ malt beverage taps that will be used for filling and refilling growlers;

3. Each container shall contain ~~no less than five (5)]~~ tubes that will be used only for filling and refilling growlers;

4. The growler is inspected visually for contamination;

5. The growler is filled or refilled with a tube as prescribed in subsection (5) of this section; and

6. A different tube from the container shall be used for each fill or refill of a growler; or

(b) Filling a growler with a contamination-free process. The growler **shall be/is**:

1. Inspected visually for contamination; and

2. Compliant with the **Kentucky/FDA** Food Code, **incorporated by reference in 902 KAR 45:005.**

(4) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage faucet and extends to the bottom of the growler or with a commercial filling machine.

(5) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.

FREDERICK A. HIGDON, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 14, 2014

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

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7479.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, August 7, 2014)

815 KAR 20:040. Vehicle[Truck] identification.

RELATES TO: KRS 318.170

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The office is directed by]~~KRS 318.170 authorizes agents of the department to enforce the provisions of the state plumbing laws and code. This administrative regulation establishes the identification requirements for all vehicles used in the operation of a plumbing business.~~[It is difficult to maintain adequate surveillance for persons who are installing or constructing plumbing systems without their trucks being properly identified. Identification as set forth in this administrative regulation would greatly assist the department in carrying out this function. This amendment is necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made].~~

Section 1. Vehicle[Truck] Identification. (1) All vehicles[trucks] used in the operation of a plumbing business shall be properly identified as established in this administrative regulation.

(2) Each vehicle~~[The equipment]~~ shall bear the name of the company and the master plumber's Kentucky license number.

(3) All~~[the]~~ identification required by this administrative regulation shall be in letters not smaller than three (3) inches high and shall be kept legible at all times.

JACK COLEMAN, Deputy Commissioner
For AMBROSE WILSON IV, Chairman
LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

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PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, August 7, 2014)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.160

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department~~[office]~~, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200(2) requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

Section 1. Definitions. (1) "Developed travel distance" means the length of a pathway measured along the center line of the path.

(2) "Modular" means a structure or component that is wholly or in substantial part fabricated in an off-site manufacturing facility for installation at the building site.

Section 2. General Requirements. (1) In a building accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be the load denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.

(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless~~[the department determines that]~~:

(a) Separate facilities on each level or floor are unnecessary; and

(b) Toilet rooms on every other level or floor shall be sufficient.

(4) Unisex Facilities in Historic Buildings. A building or structure that is listed in the National Register of Historic Places or designated as historic under Kentucky statute may provide the required number of plumbing fixtures in unisex facilities if the overall occupant load is 100 persons or less, except as required in Sections 7, 8, 9, 12, 13, 15, 16, and 17 of this administrative regulation.

(5) Unisex facilities in historic buildings permitted by this section shall not be required to provide the urinals.

(6) Toilet rooms for males, ~~[and]~~ females, and unisex shall be clearly marked.

Section 3. Toilet Floor Construction Requirements. (1) Floors in toilet rooms shall be constructed of nonabsorbent materials.

(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.

(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least:

(a) One (1) floor drain; and

(b) One (1) accessible hose bibb.

Section 4. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 5. Theaters, Assembly Halls, and Similar Occupancies. Separate toilet rooms for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation. (1) Water closets and urinals for males.

(a) Water closets for males shall be installed with at least~~[in the following proportions]~~:

1. One (1) water closet for each 100 males;
2. Two (2) water closets for 101 to 200 males;
3. Three (3) water closets for 201 to 400 males; and

4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.

(b) Urinals for males shall be installed with at least~~[in the following proportions]~~:

1. One (1) urinal for eleven (11) to 100 males;
2. Two (2) urinals for 101 to 300 males;
3. Three (3) urinals for 301 to 600 males; and

4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. Water closets for females shall be installed with at least~~[in the following proportions]~~:

- (a) One (1) water closet for each fifty (50) females;
- (b) Two (2) water closets for fifty-one (51) to 100 females;
- (c) Three (3) water closets for 101 to 150 females;
- (d) Four (4) water closets for 151 to 200 females; and
- (e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.

(3) Lavatories for Males or Females. Lavatories shall be installed with at least~~[in the following proportions]~~:

- (a) One (1) lavatory for up to 100 persons;
- (b) Two (2) lavatories for 101 to 200 persons;
- (c) Three (3) lavatories for 201 to 400 persons;
- (d) Four (4) lavatories for 401 to 750 persons; and
- (e) If over 750 persons, four (4) lavatories plus one (1)

additional lavatory for each additional 500 persons or fraction thereof.

(4) Sinks. There shall be at least one (1) service sink or slop sink on each floor.

(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(6) Drinking fountain. At least one (1)[A] drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. Libraries, Museums, and Art Galleries. Separate toilet facilities for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation:

(1) There shall be at least one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) Except as established in subsection (7) of this section, there shall be at least one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) There shall be at least:

(a) One (1) urinal for eleven (11) to 200 males;

(b) Two (2) urinals for 201 to 400 males;

(c) Three (3) urinals for 401 to 600 males; and

(d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(4) There shall be at least one (1) service sink or slop sink on each floor.

(5) At least one (1)[A] drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity of fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.

(7) Urinals may be substituted for water closets for males if:

(a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and

(b) The minimum number of urinals is installed.

(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 7. School Buildings Not Including Higher-Education Facilities. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section. (1) Drinking fountains.

(a) At least one (1)[A] drinking fountain shall be provided on each floor and wing of a building.

(b) At least one (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(c) The drinking fountains shall be equipped with:

1. A protective cowl; and

2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed with at least~~[in the following proportions]~~:

1. One (1) water closet for up to twenty-five (25) pupils;

2. Two (2) water closets for twenty-six (26) to 100 pupils; and

3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each additional 100 pupils or fraction thereof;

(b) Urinals for males shall be installed with at least~~[in the following proportions]~~:

1. One (1) urinal for up to twenty-five (25) pupils;

2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;

3. Four (4) urinals for fifty-one (51) to 100 pupils;

4. Six (6) urinals for 101 to 200 pupils;

5. Eight (8) urinals for 201 to 300 pupils;

6. Ten (10) urinals for 301 to 400 pupils;

7. Twelve (12) urinals for 401 to 500 pupils; and

8. If over 500 pupils, twelve (12) urinals plus one (1) additional

urinal for each additional fifty (50) pupils or fraction thereof in excess of 500;

(c) Water closets for females shall be installed with at least~~[in the following proportions]~~:

1. Two (2) water closets for up to twenty-five (25) pupils;

2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;

3. Six (6) water closets for fifty-one (51) to 100 pupils;

4. Eight (8) water closets for 101 to 200 pupils;

5. Ten (10) water closets for 201 to 300 pupils;

6. Twelve (12) water closets for 301 to 400 pupils;

7. Fourteen (14) water closets for 401 to 500 pupils; and

8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each additional forty (40) pupils or fraction thereof; and

(d)1. Lavatories for male and female pupils shall be installed with at least~~[in the following proportions]~~:

a. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and

b. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each additional fifty (50) pupils or fraction thereof; and

2. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) At least one (1) service sink or slop sink shall be installed on each floor of a building.

(4) If detached modular classrooms are used, sanitary facilities shall not be required, if:

(a) The entrance of the modular classroom for elementary grades through the fifth grade is within a developed travel distance not to exceed 100 feet from the accessible entrance to the main structure or an approved central modular restroom;

(b) The entrance of the modular classroom for sixth grade and above is within a developed travel distance not to exceed 200 feet, from the accessible entrance to the main structure or an approved central modular restroom;

(c) The travel path meets the accessibility requirements established in the Kentucky~~[Uniform]~~ Building Code, 815 KAR 7:120; and

(d) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the modular classrooms.

(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 8. Schools of Higher Education and Similar Educational Facilities. (1)(a) Except as established in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed at least:

1. One (1) water closet for each fifty (50) males and one (1) water closet for each twenty-five (25) females or fraction thereof;

2. One (1) lavatory for each fifty (50) persons or fraction thereof;

3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof; and

4. One (1) urinal for each fifty (50) males or fraction thereof~~;~~ and]

(b) One (1) water closet less than the number specified in paragraph (a) of this subsection may be provided for each urinal installed except that the number of water closets in those cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(2) Water closets in a school of higher education or a similar education facility shall be of the elongated bowl type with a split open front seat.

Section 9. Public Garages and Service Stations. (1) Separate toilet rooms for males and females shall be provided with at least:

(a) A water closet and lavatory for females; and

(b) A water closet, lavatory, and urinal for males.

(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 10. Churches. (1) Sanitary facilities shall be provided in a church with at least~~[as follows]~~:

- (a) One (1) drinking fountain for each 400 persons or fraction thereof;
 - (b) One (1) water closet for each 150 females or fraction thereof;
 - (c) One (1) water closet for each 300 males or fraction thereof;
 - (d) One (1) urinal for fifty (50) to 150 males or fraction thereof;
 - (e) One (1) additional urinal for each additional 150 males or fraction thereof; and
 - (f) One (1) lavatory for each 150 persons or fraction thereof.
- (2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 11. Transient Lodging Facilities. A transient lodging facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section. (1) A hotel or motel with private rooms shall have at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be at least:

- (a) One (1) water closet for each twenty-five (25) males or fraction thereof;
- (b) One (1) water closet for each fifteen (15) females or fraction thereof;
- (c) One (1) lavatory for each twenty-five (25) persons or fraction thereof;
- (d) One (1) urinal for eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;
- (e) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and
- (f) One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, there shall be at least one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be at least:

- (a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;
- (b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;
- (c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof;
- (d) One (1) lavatory for each ten (10) persons or fraction thereof; and
- (e) One (1) bathtub or shower for each ten (10) persons or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. (1) Water closets. There shall be at least:

- (a) One (1) water closet for up to ten (10) males plus one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and
- (b) One (1) water closet for up to eight (8) females plus one (1) additional water closet for each additional twenty (20) females or fraction thereof.

(2) Urinals.

(a) There shall be at least:

- 1. One (1) urinal for each twenty-five (25) males or fraction thereof up to 150 males; and
- 2. If there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

(b) If urinals are provided, a urinal may be substituted for a water closet, not to exceed one-third (1/3) of the required total number of water closets.

(c) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories. There shall be at least one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each additional twenty (20) males and fifteen (15) females or fraction thereof.

(4) Additional fixtures. There shall be at least:

- (a) 1. One (1) bathtub or shower for each eight (8) persons or

fraction thereof, up to 150 persons; and

2. If there are over 150 persons, ~~[there shall be]~~ one (1) additional bathtub or shower for each twenty (20) persons;

(b) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons or fraction thereof; and

(d) One (1) service sink or slop sink for each 100 persons or fraction thereof.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 13. Hospitals, Nursing Homes, and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 20:046, 20:056, and 9:010. Sanitary facilities shall be provided on each floor level and shall conform to this section. (1) Hospitals.

(a) Wards. There shall be at least:

- 1. One (1) water closet for each ten (10) patients or fraction thereof;
- 2. One (1) lavatory for each ten (10) patients or fraction thereof;
- 3. One (1) tub or shower for each fifteen (15) patients or fraction thereof; and
- 4. One (1) drinking fountain for each 100 patients or fraction thereof.

(b) Individual rooms. There shall be at least one (1) water closet, one (1) lavatory, and one (1) tub or shower.

(c) Waiting rooms. There shall be at least one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be at least:

- (a) One (1) water closet for each twenty-five (25) males or fraction thereof;
- (b) One (1) water closet for each twenty (20) females or fraction thereof;
- (c) One (1) lavatory for each ten (10) persons or fraction thereof;
- (d) One (1) urinal for each fifty (50) males or fraction thereof;
- (e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;
- (f) One (1) drinking fountain on each floor; and
- (g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell. There shall be at least:

- 1. One (1) prison-type water closet; and
- 2. One (1) prison-type lavatory.

(b) Day rooms and dormitories.

1. There shall be at least:

- a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;
- b. One (1) lavatory for each twelve (12) inmates or fraction thereof;
- c. One (1) shower for each fifteen (15) inmates or fraction thereof;
- d. One (1) drinking fountain per floor; and
- e. One (1) service sink or slop sink per floor.

2. For males, one (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.

(d) There shall be at least one (1) drinking fountain on each floor.

(e) There shall be at least one (1) service sink or slop sink per floor.

Section 14. Workshops, Factories, Mercantile, and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted. (1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) There shall be at least:

1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;
2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;
3. One (1) urinal for eleven (11) to fifty (50) employees;
4. Two (2) urinals for fifty-one (51) to 100 employees;
5. One (1) lavatory for each twenty-five (25) females or fraction thereof up to 100; and
6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;

(b) If in excess of 100 persons, there shall be at least:

1. One (1) additional water closet for each additional thirty (30) males and each additional thirty (30) females or fraction thereof;
2. One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and
3. One (1) additional urinal for each additional 100 males or fraction thereof;

(c) There shall be at least:

1. One (1) shower for each fifteen (15) persons or fraction thereof, exposed to skin contamination from irritating, infectious, or poisonous materials;

2.a. One (1) drinking fountain on each floor for each fifty (50) employees or fraction thereof, up to 100 employees; and

b. If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) employees or fraction thereof; and

3. One (1) service sink or slop sink per floor; and

(d) 1. Individual sinks or wash troughs may be used in lieu of lavatories.

2. Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Employees.

1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For a store containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or accessible areas having a travel distance of not more than 500 feet within the building in which the store is located.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:

a. The distance from the main entrance of a store does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and there shall be at least:

1. One (1) water closet for one (1) to 150 males;
2. Two (2) water closets for 151 to 300 males;
3. Three (3) water closets for 301 to 450 males;
4. If over 500 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof;
5. One (1) urinal for fifty (50) to 200 males;
6. Two (2) urinals for 201 to 400 males;
7. Three (3) urinals for 401 to 600 males;
8. If over 300 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;
9. One (1) water closet for one (1) to 100 females;
10. Two (2) water closets for 101 to 200 females;
11. Three (3) water closets for 201 to 400 females;
12. If over 400 females, three (3) water closets plus one (1) additional water closet for each additional 300 females or fraction thereof;
13. One (1) lavatory for one (1) to 200 persons;

14. Two (2) lavatories for 201 to 400 persons;

15. Three (3) lavatories for 401 to 700 persons;

16. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof; Three (3) lavatories plus one (1) lavatory for each 500 persons, or fraction thereof, in excess of 700;

17. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

18. One (1) service sink or slop sink per floor.

(3) Office buildings.

(a) Employees.

1. Except as established in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.

2. For an office building or space containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of not more than 500 feet within the same building.

(b) Customers.

1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.

2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:

a. The distance from the main entrance of an office space does not exceed 500 feet; and

b. The toilet room area is accessible to physically disabled persons.

(c) Separate sanitary facilities for each gender shall be provided as stated in this section.

1. For males and females there shall be at least:

a. One (1) water closet for one (1) to fifteen (15) persons;

b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;

c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;

d. Four (4) water closets for fifty-six (56) to eighty (80) persons;

e. Five (5) water closets for eighty-one (81) to 110 persons;

f. Six (6) water closets for 111 to 150 persons;

g. If over 150 persons, six (6) water closets plus one (1) additional water closet for each additional forty (40) persons or fraction thereof;

h. One (1) lavatory for one (1) to fifteen (15) persons;

i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;

j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;

k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;

l. Five (5) lavatories for ninety-one (91) to 125 persons;

m. If over 125 persons, five (5) lavatories plus one (1) additional lavatory for each additional seventy-five (75) persons or fraction thereof; and

n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

2. For males, if urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 15. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section. (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less, there shall be at least:

1. One (1) water closet for each seventy-five (75) males or fraction thereof;

2. One (1) water closet for each fifty (50) females or fraction thereof;

3. One (1) urinal for each seventy-five (75) males or fraction thereof;

4. One (1) lavatory for each 100 persons or fraction thereof;

5. One (1) shower per each fifty (50) persons or fraction thereof; and

6. One (1) drinking fountain per each 200 persons or fraction thereof;

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be at least:

1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females or fraction thereof;

2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males or fraction thereof;

3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;

4. One (1) lavatory for up to 150 persons;

5. Two (2) lavatories for 151 to 400 persons;

6. Three (3) lavatories for 401 to 750 persons;

7. If over 750 persons, three (3) lavatories plus one (1) additional lavatory for each additional 750 persons or fraction thereof;

8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;

9. If over 150 persons, three (3) showers plus one (1) additional shower for each additional 500 persons or fraction thereof; and

10. One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

(a) One (1) hour or less shall have at least one (1) shower for each six (6) swimmers; and

(b) One (1) to two (2) hours shall have at least one (1) shower for each ten (10) swimmers.

(4) ~~[Satisfactorily designed and located]~~ Shower facilities, including warm water and soap, shall be provided for each sex.

(a) Showers shall be supplied with water at a temperature of not less than ninety (90) degrees Fahrenheit and at a flow rate of at least three (3) gallons per minute.

(b) Thermostatic, tempering, or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the facilities are available to pool patrons within 150 feet from the pool.

Section 16. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020, Section 8, and this section. (1) Except for a self-contained recreational vehicle community, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures established[specified] in this section.

(2) Except for a self-contained recreational vehicle community, sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: At least one (1) water closet, one (1) lavatory, and one (1) shower;

(b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: At least two (2) water closets, two (2) lavatories, and two (2) showers;

(c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:

1. Males: At least two (2) water closets, one (1) urinal, three (3) lavatories, and three (3) showers; and

2. Females: At least two (2) water closets, three (3) lavatories, and three (3) showers;

(d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:

1. Males: At least two (2) water closets, two (2) urinals, three (3) lavatories, and three (3) showers; and

2. Females: At least three (3) water closets, three (3) lavatories, and three (3) showers;

(e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:

1. Males: At least three (3) water closets, two (2) urinals, four (4) lavatories, and four (4) showers; and

2. Females: At least four (4) water closets, four (4) lavatories, and four (4) showers;

(f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:

1. Males: At least four (4) water closets, two (2) urinals, five (5) lavatories, and five (5) showers; and

2. Females: At least five (5) water closets, five (5) lavatories, and five (5) showers; and

(g) If over 100 vehicle spaces are provided, there shall be provided at least:

1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;

2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and

3. One (1) additional urinal for males per additional 100 vehicle spaces or fraction thereof.

Section 17. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section. (1)(a) Each residential camp site shall be provided with sanitary facilities for each sex as established[specified] in this section.

(b) A day camp shall:

1. Not be required to provide shower facilities; and

2. Provide all other sanitary facilities for each sex as established[specified] in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:

1. Males: At least one (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and

2. Females: At least two (2) water closets, one (1) lavatory, and one (1) shower;

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:

1. Males: At least two (2) water closets, one (1) urinal, two (2) lavatories, and two (2) showers; and

2. Females: At least two (2) water closets, two lavatories, and two showers;

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:

1. Males: At least two (2) water closets, two (2) urinals, two (2) lavatories, and three (3) showers; and

2. Females: At least three (3) water closets, two (2) lavatories, and three (3) showers;

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:

1. Males: At least three (3) water closets, two (2) urinals, three (3) lavatories, and four (4) showers; and

2. Females: At least four (4) water closets, three (3) lavatories, and four (4) showers;

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:

1. Males: At least three (3) water closets, three (3) urinals, three (3) lavatories, and five (5) showers; and

2. Females: At least five (5) water closets, three (3) lavatories, and five (5) showers;

(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:

1. Males: At least four (4) water closets, three (3) urinals, four (4) lavatories, and six (6) showers; and

2. Females: At least six (6) water closets, four (4) lavatories, and six (6) showers; and

(g) If over ninety-five (95) persons are served, there shall be provided at least:

1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;

2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and

3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

(3) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to elementary through secondary level school buildings.

(4) Water closets may be substituted for urinals if facilities are to be used by both sexes.

Section 18. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020, 45:005, and this section. (1) Food stores.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities shall be provided for the employees.

(b)1. Separate sanitary facilities for each sex shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities shall be:

a. Based on one (1) person per fifty (50) square feet; and

b. Installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

(c) There shall be at least:

1. One (1) water closet for one (1) to 100 persons;

2. Two (2) water closets for 101 to 200 persons;

3. Three (3) water closets for 201 to 400 persons;

4. If over 400 persons, three (3) water closets plus one (1) additional water closet for each additional 500 males or 300 females or fraction thereof;

5. One (1) urinal for eleven (11) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;

9. One (1) lavatory for one (1) to 200 persons;

10. Two (2) lavatories for 201 to 400 persons;

11. Three (3) lavatories for 401 to 700 persons;

12. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof;

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

14. One (1) service sink, utility sink, or curbed mop basin per floor as required by the Cabinet for Health and Family Services.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities for each sex shall be provided for the employees.

(b)1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees.

2. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

3. A restaurant with a business occupancy of one (1) to fifteen (15) persons shall:

a. Comply with the requirements in paragraphs (c) and (e) of this subsection; or

b. Provide at least one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.

(c) There shall be at least:

1. Two (2) water closets for one (1) to 100 persons;

2. Three (3) water closets for 101 to 200 persons;

3. Four (4) water closets for 201 to 300 persons; and

4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof.

(d) There shall be at least:

1. One (1) urinal for fifty (50) to 200 males; and

2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof.

(e) There shall be at least:

1. One (1) lavatory for one (1) to 200 persons;

2. Two (2) lavatories for 201 to 400 persons;

3. Three (3) lavatories for 401 to 600 persons; and

4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof.

(f) There shall be at least:

1. One (1) drinking fountain for one (1) to 100 persons; and

2. If over 100 persons, two (2) drinking fountains plus one (1) additional water fountain for each additional 400 persons or fraction thereof.

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink, or curbed mop basin on each floor as required by the Cabinet for Health and Family Services.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees.

(3) Licensed food establishments. In all food establishments licensed by the Cabinet for Health and Family Services, Department for Public Health, the requirements in this subsection shall be met.

(a) Hand-washing sinks.

1. All hand-washing sinks shall have a minimum hot water temperature of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit.

2. Self-closing faucets shall provide a flow of water for no less than fifteen (15) seconds from activation.

3. Placement of hand-washing sinks shall be approved by the Cabinet for Health and Family Services, Department for Public Health pursuant to 902 KAR 45:005.

(b) A three (3) compartment sink used for washing utensils shall be required and shall drain by a direct connection with a minimum of a two (2) inch drain.

(c) Dishwashing or ware washing machines shall discharge indirectly through a three (3) inch open receptacle.

(d) Residential type dishwashing machines shall discharge:

1. Through an air gap device; or

2. Indirectly through a three (3) inch open receptacle.

(e) Sinks solely used for food preparation shall discharge by an indirect connection to a minimum three (3) inch trap.

(f) All hub drains, open receptacles, floor sinks, or other waste receptacles shall extend one (1) inch above the floor plane unless a full grate/strainer is installed flush with the floor.

(g) Occupied mobile food units not located within an existing permitted food establishment shall:

1. Meet the requirements of the Kentucky Plumbing Code, KRS Chapter 318 and 815 KAR Chapter 20;

2. Have a waste tank no less than fifty (50) percent larger than the freshwater tank;

3. Have a National Sanitary Foundation (NSF) approved freshwater tank for potable water; and

4. Have a minimum of a three (3) compartment sink and one (1) hand sink.

JACK COLEMAN, Deputy Commissioner

For AMBROSE WILSON IV, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: June 6, 2014

FILED WITH LRC: June 9, 2014 at 1 p.m.

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, August 7, 2014)

902 KAR 95:040. Radon Contractor Certification Program.

RELATES TO: KRS 211.9101 - 211.9135

STATUTORY AUTHORITY: KRS 211.9109, 211.9111, 211.9115, 211.9121, 211.9135(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9135(1) and (2) ~~require~~**[requires]** the Cabinet for Health and Family Services to be the regulatory agency for the control of radon and radon activities in the Commonwealth of Kentucky, including laboratory analysis, mitigation, and measurements. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes general requirements for the certification of individuals who perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Definitions. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ANSI" means the American National Standards Institute.

(3) "ANSI-~~f~~**AARST**" means those standard operating procedures or practices developed and maintained by the AARST Consortium on National Radon Standards for radon measurement, mitigation, or laboratory analysis.

(4) "Commercial building" is defined by KRS 211.9101(7)[means a building other than a residential or multi-family building, including those buildings intended for public purposes].

(5) "EPA" means the Environmental Protection Agency.

(6) "Mitigation system" is defined by KRS 211.9101(21).

(7) "Multi-family housing" means a commercial building with attached family dwellings that:

(a) Are occupied by residents who[in-which-occupants] are primarily permanent in nature;

(b) Are[that are: (a)1.] greater than four (4) units[,] or[2.] three (3) stories in height; and

(c)[(b)] Contain an independent heating, ventilation, and air conditioning (HVAC) system.

(8)[(7)] "NRPP" means the National Radon Proficiency Program.

(9)[(8)] "NRSB" means the National Radon Safety Board.

(10)[(9)] "Picocuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

(11)[(10)] "Residential building" is defined by KRS 211.9101(28)[means detached one (1) to four (4) unit family dwellings not more than three (3) stories in height in which occupants are permanent in nature].

Section 2. Certification Requirements. (1)~~[Except as provided for in KRS 211.9107(1) through (7), a person or business entity shall not:~~

~~(a) Advertise or claim to be certified;~~

~~(b) Provide professional or expert advice; or~~

~~(c) Conduct radon measurement, mitigation, or laboratory analysis without first obtaining certification from the cabinet.~~

(2) A person shall be eligible to be certified as a radon measurement contractor or a radon mitigation contractor if the individual:

(a)[Is a minimum of eighteen (18) years of age;

~~(b)] Submits to the cabinet:~~

1. An application on cabinet Form DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. A two (2) inch by two (2) inch passport photo;

3. Verification of completion of an AARST-NRPP or NRSB course and exam;

4. The fees established in Section 3 of this administrative regulation;

5. A quality assurance plan that meets the requirements in Section 4(1) and (2) of this administrative regulation; and

6. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f)[Proof of fulfillment of continuing education requirements as established in KRS 211.9127]; and

~~(b)[(c)]~~ Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky.

(2)[(3)] A radon laboratory shall be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) Submits to the cabinet:

1. An application on cabinet form DFS-375, Application for Certification for Radon Contractors and Laboratories;

2.[Submits] The fees established in Section 3 of this administrative regulation; and

3.[(c)-Submits] A quality assurance plan as established in Section 4 of this administrative regulation; and

(c)[(d)] Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity.

~~(3)[(4)] Certification requirements shall not apply to an individual or business entity pursuant to KRS 211.9107.~~

(5) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall:

(a) Maintain a separate license for each discipline; and

(b) Adhere to the limitations in[pertaining to] KRS 211.9117(1) and (2).

(4)[(6)] Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party.

~~(5)[(7)] A radon contractor or radon laboratory shall meet the requirements established in KRS 211.9101 through 211.9135.~~

(8) A certified radon measurement contractor working exclusively for a radon laboratory shall not be required to meet the insurance and quality assurance requirements outlined in subsection (1) of this section.

Section 3. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable; and

(b) Submitted with an application for initial certification or certification renewal.

(2)(a) The fee for initial certification shall be \$250.

(b) The annual renewal fee shall be \$250.

(c) The fee for a duplicate certificate shall be twenty (20) dollars.

(d) The fee for late renewal shall be \$100[The following annual fees shall accompany all applications for certification or renewal and shall be non-refundable:

(a) Initial certification: \$250;

(b) Annual renewal: \$250;

(c) Duplicate certificate: twenty (20) dollars; and

(d) Late renewal: \$100.

~~(2) A certified radon mitigation contractor shall pay a registration fee for each residential or commercial mitigation system installed.~~

~~(3) The following registration fees shall apply:~~

~~(a) Residential radon mitigation system: twenty-five (25) dollars per discharge opening; or~~

~~(b) Commercial or multi-family radon mitigation system: fifty (50) dollars per discharge opening.~~

~~(4) A certified radon mitigation contractor shall submit Form DFS 376, Application for Registration for Radon Mitigation System, for each residential or commercial mitigation system installed].~~

Section 4. Quality Assurance Plan and Standard Operating Procedures. (1) a person certified as a measurement contractor shall submit for cabinet approval a quality control program plan that includes:

(a) A quality statement committing to provide quality work;

(b) A description of the management and structure of the

organization;

(c) A listing of personnel and personnel qualifications and training;

(d) A description of types of radon measurements performed and other related services offered;

(e) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(f) A list of equipment serial numbers, model numbers, and calibration records used in performing analytical analysis;

(g) A list of manufacturers and test types used while conducting measurement for laboratory analysis;

(h) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;

(i) Procedures for procuring and storing measurement devices and materials;

(j) Procedures for maintaining documents and records;

(k) Procedures for calibrating and testing instruments;

(l) A corrective action program;

(m) Examples of forms, reports, and correspondence used in communications;

(n) A description of the quality assurance measures including the:

1. Evaluation criteria; and

2. Frequency of the evaluations; ~~and~~

(o) A statement of compliance with ANSI-AARST standard operating procedures; ~~and~~

~~(p) The location where records are retained in accordance with KRS 211.913(3).~~

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

(a) A quality statement committing to provide quality work;

(b) A description of the management and structure of the organization;

(c) A listing of personnel and personnel qualifications and training;

(d) A description of all types of radon mitigation methods performed and other related services offered;

(e) A description of diagnostic testing methods utilized in designing mitigation systems;

(f) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;

(g) Procedures for maintaining documents and records;

(h) Procedures for calibrating and testing instruments;

(i) A corrective action program;

(k) Examples of forms, reports, and correspondence used in communications;

(l) A description of the quality assurance measures including the:

1. Evaluation criteria; and

2. Frequency of the evaluations; and

(m) A statement of compliance with ANSI-AARST standard operating procedures.

(3) A person certified as a radon measurement contractor shall conduct measurements in accordance with the following standard operating procedures and quality assurance protocols:

(a) Residential building measurement: ~~ANSI-AARST[-ANSI]~~ Protocols for Radon Measurements in Homes (MAH 2005);

(b) Multi-family building measurement: ~~ANSI-AARST[-ANSI]~~ Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012); ~~and~~

(c) Quality assurance protocols: EPA Protocols for Radon and Radon Decay Product Measurements in Homes (EPA 402-R-92-003).

(4) A person certified as a radon mitigation contractor shall conduct mitigations in accordance with the following standards:

(a) Residential building active mitigation: ~~ANSI-AARST[-ANSI]~~ Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings;

(b) Multi-family active mitigation: ~~ANSI-AARST[-ANSI]~~ Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013); and

(c) Residential building passive mitigation: ~~ANSI-AARST[-~~

~~ANSI]~~ Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013).

(5) All mitigation systems shall:

(a) Be designed to reduce a radon concentration in each area within the footprint of the building as low as reasonably achievable (ALARA); and

(b) Achieve a radon level below the Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(6) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is achieved.

(7) Upon modification to a component of the quality assurance program plan, the radon measurement or mitigation contractor shall resubmit the plan for approval by the cabinet prior to implementation of the modifications.

Section 5. ~~[Certification,]~~ Training~~[-Exams,]~~ and Continuing Education Requirements. (1) Continuing Education.

(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.

(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year[Continuing education units shall be obtained pursuant to KRS 211.9127].

(c)[(2)] A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.911, 211.9115, or 211.9127.

(d)[(a)] A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(e)[(b) A person dually-certified as a radon measurement contractor and a radon mitigation contractor shall maintain a separate license for each discipline. (3)] Continuing education units shall be obtained from NRPP or NRSB approved courses.

(2) Certification Courses.

(a)[(4)] Measurement contractor certification courses shall be a minimum of sixteen (16) hours of supervised instruction.

(b)[(5)] Mitigation contractor certification courses shall be:

1.[(a)] A minimum of sixteen (16) hours of supervised instruction; and

2.[(b)] Include an additional four (4) hours of hands-on field work at a mitigation site.

(c)[(6)] Measurement and mitigation contractors shall obtain an additional one (1) hour of course content on the requirements of this administrative regulation and KRS 211.9101 through 211.9135.

Section 6. Renewal of Certification~~[and—Inactive Certification]~~. (1) Each annual certification shall expire on June 30.

(2) A person seeking [certification or] renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b)[If renewing a certification,] Submit to the cabinet;

1. A renewal application on cabinet Form DFS-375, Application for Certification for Radon Contractors and Laboratories, a minimum of thirty (30) calendar days prior to certification expiration. Form DFS-375 shall be deemed submitted on the date that it is received by the cabinet;

2. The fees established in Section 3 of this administrative regulation;

3. Proof of fulfillment of continuing education requirements as established in Section 5 of this administrative regulation;

4. An updated quality assurance plan that meets the requirements in Section 4 of this administrative regulation; and

5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f).

(3) Certifications not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3 of this administrative regulation.

(4) Certifications not renewed within ninety (90) days after

the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).

Section 7. Termination of Certification and Inactive Certification. (1) A certified radon measurement contractor or radon mitigation contractor shall be responsible for notifying the cabinet in writing upon electing to terminate certification.

(2) A person previously certified by the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain certification may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

1. Pay the certification fee established in Section 3 of this administrative regulation; and

2. Be exempt from continuing education requirements.

(b) A certified radon contractor on inactive status may petition the cabinet for renewal of active certification. If a certified radon contractor on inactive status wishes to renew active certification, the petitioner shall meet the requirements of this administrative regulation.

Section 8. Certification Denial, Suspension, or Revocation. Certifications shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 9. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on a quarterly basis after a:

(a) Radon or radon progeny test;

(b) Radon mitigation activity;

(c) Modification to any component of the radon contractor's quality assurance program plan; or

(d) Request from the cabinet.

(2) The report shall include the:

(a) Zip code of location of the building;

(b) Name and telephone number of the owner or owners of the building where the radon testing or mitigation activities were conducted; and

(c) Results of any tests performed.

(3) The results for each measurement conducted shall include the:

(a) Method used for radon or radon decay product testing;

(b) Conditions under which the test or tests were conducted;

(c) Location or locations within the building where the test or tests were conducted;

(d) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(e) Date on which the test or tests were conducted; and

(f) Purpose of the test or tests.

(4) The mitigation report shall include the:

(a) Type of structure mitigated;

(b) Type of mitigation system installed;

(c) Location of mitigation system within the structure;

(d) Post-mitigation measurements;

(e) Floor plan of the structure with the location of a mitigation system; and

(f) Diagnostic and communication testing.

Section 10. Administrative Hearings. Persons, business entities, and analytical laboratories shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 11. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "DFS-375, Application for Certification for Radon Contractors and Laboratories", 9/2012;

(b) ~~Form "DFS-376, Application for Registration for Radon Mitigation System", 9/2012;~~

(c) "Protocols for Radon Measurements in Homes (MAH

2005)", 9/2005;

(c)(d) "Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012)", 2012;

(d)(e) "Protocols for Radon and Radon Decay Products Measurements in Homes (EPA 402-R-92-003)", 5/1993;

(e)(f) "Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings", 6/2006;

(f)(g) "Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013)", 2013; and

(g)(h) "Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013)", 12/2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

Stephanie Mayfield Gibson, MD, FCAP, Commissioner

Audrey Tayse Haynes, Secretary

APPROVED BY AGENCY: June 11, 2014

FILED WITH LRC: June 13, 2014 at 11 a.m.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amended After Comments)

505 KAR 1:110. Department of Juvenile Justice Policies and Procedures[Manual]: Program Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policies[Policy] and Procedures[Manual]: Program Services", August 12[May 14], 2014[November 15, 2005], is incorporated by reference and includes the following:

- 300 Definitions[Programs and Services] (Amended 08/12/14[05/14/14][7/15/05]);
- 300.1 Programs and Services[Communication and Correspondence] (Amended 05/14/14[7/15/05]);
- 300.2 Correspondence to the Court System (Added 05/14/14);
- 301 Intake[Reception] and Orientation (Amended 05/14/14[11/15/05]);
- 301.1 Youth's Personal Property,[Belongings and] Dress Code, and Facility Issued Property (Amended 05/14/14[7/15/05]);
- 301.2 Hair and Grooming (Added 05/14/14);
- 302 Individual Treatment Plan and Aftercare Plan[Individualized Treatment/Aftercare Planning] (Amended 05/14/14[11/15/05]);
- 303 Treatment Team Composition, Function,[Functioning] and Responsibility (Amended 05/14/14[7/15/05]);
- 306 Phase System (Amended 05/14/14[7/15/05]);
- 307 Counseling Services (Amended 08/12/14[05/14/14] [11/15/05]);
- 308 Advanced Care Unit (Added 05/14/14);
- 309 Family Engagement[Involvement in Treatment Process] (Amended 05/14/14[7/15/05]);
- 310 Family and Community Contacts: Mail, Telephone, and Visitation[, Off-Grounds Activities, Day Release and Furlough] (Amended 05/14/14[7/15/05]);
- 314 Youth Council (Amended 05/14/14[7/15/05]);
- 315 Use of Non-Governmental[Nongovernmental] Funds and Youth Activity Funds (Amended 05/14/14[7/15/05]);
- 316 Youth Work Programs (Amended 05/14/14[7/15/05]);
- 317 Recreation (Amended 05/14/14[7/15/05]);
- 318 Behavior Management (Amended 05/14/14[7/15/05]);
- 318.1 Discipline (Amended 05/14/14[7/15/05]);
- 318.2 Disciplinary Review (Amended 05/14/14[11/15/05]);
- 318.3 Discipline: Level V Youth Development Center[5 Facilities] (Amended 05/14/14[7/15/05]);
- 319 Staff Requirements for the[Required Staffing for] Supervision of Youth (Amended 05/14/14[7/15/05]);
- 319.1 Facility Capacities[and Staffing Requirements] (Amended 05/14/14[7/15/05]);
- 320 Transportation of Youth (Amended 05/14/14[7/15/05]);
- 321 [Critical] Incident Reporting[Reports] (Amended 05/14/14[7/15/05]);

- 322 Drug Screening and Testing ([Added and] Amended 05/14/14[11/15/05]);
- 323 Isolation (Amended 08/12/14[05/14/14][11/15/05]);
- 324 [Mechanical] Restraints (Amended 05/14/14[11/15/05]);
- 325 Searches (Added 05/14/14); [325.1 Searches (Amended 7/15/05)]
- 326 Contraband, Seizure, and Chain of Custody[Evidence] ([Added and] Amended 05/14/14[7/15/05]);
- 327 Escape and Absent Without Leave[AWOL] (Amended 05/14/14[7/15/05]);
- 328 Individual Client Records[Record] (Amended 05/14/14[7/15/05]);
- 329 Progress Notes[Notation] (Amended 05/14/14[7/15/05]);
- 330 Log and Shift Reports (Amended 05/14/14[7/15/05]);
- 331 Grievance Procedure (Amended 05/14/14[7/15/05]);
- 332 Authorized Leave: Off-grounds Activities, Day Releases, and Furloughs (Added 05/14/14);
- 333 Day Treatment Admissions (Added 05/14/14);
- 334 Youth Development Center[YDC] Educational and Vocational Programming, Assessment, and Transition (Amended 05/14/14[7/15/05]);
- 334.1 Day Treatments[Treatment]: Educational Programming, Assessment, and Transition (Amended 05/14/14[7/15/05]);
- 334.2 Group Homes: Educational Services (Amended 05/14/14[7/15/05]);
- 335 Youth Development Center[YDC] Educational and Vocational Records; Day Treatment Educational Records (Amended 05/14/14[7/15/05]); [335.1 Day Treatment: Education; Records (Amended 7/15/05)]
- 339 Youth Development Center and Day Treatment[YDC] Instructional Staffing (Amended 05/14/14[7/15/05]);
- 341 Youth Development Center and Day Treatment Evaluation of Integrated Educational and Vocational Plan (Added 05/14/14); [339.1 Day Treatment: Instructional Staffing (Amended 7/15/05)]
- 342 YDC Evaluation of Integrated Educational/Vocational Plan (Amended 7/15/05)
- 342.1 Day Treatment: Evaluation of Educational Programming (Amended 7/15/05)
- 343 Technical[YDC Vocational] Education Safety (Amended 05/14/14[7/15/05]);
- 344 Library Services (Amended 05/14/14[7/15/05]);
- 345 Religious Programs (Amended 05/14/14[7/15/05]);
- 346.1 Youthful Offenders (Added 05/14/14);
- 347.1 Educational and Meritorious Good Time (Added 05/14/14); [346 Educational Good Time (Amended 7/15/05)]
- 347 Meritorious Good Time (Amended 7/15/05)
- 348 Sex-Offender Treatment (Amended 7/15/05)
- 351 Youthful Offender Parole (Amended 05/14/14[7/15/05]); and
- 352 Youthful Offender Transfer (Amended 05/14/14[7/15/05]); [353 Extended Jurisdiction for Youthful Offenders (Amended 7/15/05)]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Acting Commissioner

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 12, 2014 at 9 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax, (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population, and brings the Department into compliance with the American Correctional Association 4th Edition Standards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and bring the Department into compliance with the American Correctional Association 4th Edition Standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of program services within residential and day treatment programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment will bring the Department of Juvenile Justice into compliance with the American Correctional Association 4th Edition Standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and to bring the Department into compliance with the American Correctional Association 4th Edition Standards.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or authorized representative to implement practices and procedures to ensure the safe and efficient operation of Department residential and day treatment programs.

(d) How the amendment will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities. The amendment will also bring the Department of Juvenile Justice into compliance with the American Correctional Association 4th Edition Standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1,335 employees of residential programs, 353 youth in DJJ residential programs, and all visitors and volunteers to DJJ facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: To ensure a clearer understanding of the policies and procedures by staff and residents, thereby impacting the security and safety of the agency and the public.

(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: DJJ residential programs will need to update their facility Standard Operating Procedures to comply with this amendment, and will require the Advanced Care Unit to maintain a higher staff to youth ratio.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will come into compliance with the American Correctional Association 4th Edition Standards.

(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 funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required, however any associated training or staff allocations will come from the Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(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 the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.067, 600.040, 605.110(3), 605.150, 635.095, 635.100(8), 635.50, 635.520, 640.120, 645.250

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

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

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

(c) How much will it cost to administer this program for the first year? Response: There are no additional costs to "administer" the programs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(Amended After Comments)

791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), 165A.380

STATUTORY AUTHORITY: KRS 165A.340(3), (6), (10), 165A.370(4), 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3), (6), and (10), 165A.400, and 165A.450 authorize[authorizes] the commission[board] to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the

Kentucky Commission on Proprietary Education~~[applications for initial licensure and renewal of licensure for resident and non resident schools, issuance of initial permits and renewals for agents of proprietary schools, award of associate degree, change of the name of a proprietary school, change of location of a proprietary school, addition of a new certificate or diploma program, revision of an existing program, transfer of ownership, transcript requests from a closed proprietary school, and contributions to the student protection fund].~~

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue"["Net tuition income"] means the total amount of tuition earned by ~~a~~the resident school less any tuition refunds to the students during the immediate past school year, July 1 through June 30~~[calendar year, January 1 through December 34].~~

(3)~~[(2)]~~ "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change in control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution~~[for Schools]~~. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$500~~[\$300 and shall accompany Form PE-15, Application for Resident School]~~.

(2) The ~~initial~~~~[one (1) time]~~ contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$500~~[\$300, to be paid and shall accompany Form PE-15, Application for Resident School]~~.

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250~~[\$900, and shall accompany Form PE-16, Application for Non-Resident School]~~.

(4) The ~~initial~~~~[one time]~~ contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250~~[\$900, to be paid and shall accompany Form PE-16, Application for Non-Resident School]~~.

(5) At any time the balance in the student protection fund falls below \$500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school per Section 3(1) and (2) of this administrative regulation and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished~~[The initial licensure fee and student protection fund contribution shall not be prorated or refundable].~~

Section 3. Annual Renewal License Fee for Schools. (1)~~(a)~~ Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500~~[\$300 for schools whose net tuition income does not exceed \$50,000, plus fifteen (15) dollars for each additional \$10,000 of net tuition income in excess of \$50,000, not to exceed \$2,000. The annual renewal license fee shall accompany Form PE-17, Application for License Renewal Resident School]~~.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250~~[\$900].~~

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky

residents in excess of \$50,000, not to exceed \$3,000~~[The annual renewal fee shall accompany Form PE-18, Application for License Renewal Non-Resident School]~~.

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day~~[The annual renewal license fees for both resident and nonresident schools shall not be prorated or refundable].~~

Section 4. Annual Permit Fees for Agents.~~[(4)]~~ The annual permit fee for each agent working for a school licensed by the commission~~[board]~~ shall be \$175~~[\$150 and shall accompany either Form PE-19, Application for Permit to Act as an Agent, or Form PE-20, Application for Renewal of Permit to Act as an Agent, whichever is applicable.~~

~~(2) The annual permit fee and the annual permit renewal fee for agents shall not be prorated or refundable].~~

Section 5. Transfer of Ownership of a School.~~[(4)]~~ The fee for recording a transfer of ownership of a school licensed by the commission~~[board in accordance with 791 KAR 2:160]~~ shall be \$500~~[- and shall accompany Form PE-21, Application to Transfer Ownership of a School.~~

~~(2) The fee for recording a transfer of ownership shall not be prorated or refundable].~~

Section 6. Change of Name of a School.~~[(4)]~~ The fee for approval of a change of name of a school shall be \$150~~[\$400, and shall accompany Form PE-22, Application to Change the Name of a School.~~

~~(2) The fee for approval of a change of name of a school shall not be prorated or refundable].~~

Section 7. Change of location of a school.~~[(4)]~~ The fee for approval of a change of location of a school shall be \$500~~[- and shall accompany Form PE-23, Application to Change the Location of a School.~~

~~(2) The fee for approval of a change of location of a school shall not be prorated or refundable].~~

Section 8. Application to Award an Associate Degree.~~[(4)](a)~~ The fee for an application to award an associate degree~~[in accordance with 791 KAR 1:020]~~ shall be \$750~~[\$500] per degree[- and shall accompany Form PE-10, Application to Award an Associate Degree, referenced by 791 KAR 1:020.~~

~~(b) If a school simultaneously submits multiple applications for approval of associate degrees, the fee shall not exceed \$1,000 per school.~~

~~(2) The fee for application to award an associate degree shall not be prorated or refundable].~~

Section 9. New Program.~~[(4)]~~ The fee to apply for~~[approval of]~~ a new certificate or diploma program shall be \$200~~[\$150, and shall accompany Form PE-14, Application for a New Program.~~

~~(2) The fee for approval of a new certificate or diploma program shall not be prorated or refundable].~~

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Section 10. Program Revisions; Certificate, Diploma, and Degree. (1) The fee to apply for approval to revise twenty-five (25) percent[(25)] or more of any existing program[, as established in 791 KAR 1:020, Section 5(2)] shall be \$200[\$150, and shall accompany Form PE-13, Application to Revise an Existing Program for 25% or More].

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be \$100[The fee for approval to revise an existing program shall not be prorated or refundable].

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars[Maximum Fee. A school with multiple locations simultaneously filing applications for commission approval for more than one transfer of ownership, change of name, change of location, addition of a new program, revision of an existing program or associate degree, shall not pay more than \$1,000].

Section 12. Cost of site visits. (1) Costs connected with a site visit conducted in accordance with KRS 165A.370(1) and (2)[and subsequent visits as may be necessary], such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual expenses incurred shall be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

(5) This section shall not apply to visits conducted in accordance with KRS 165A.475(3) and (4).

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation[Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a New Program", Form PE-14, 2007 edition;

(b) "Application for Resident School" Form PE-15 2007 edition;

(c) "Application for Non-Resident School", Form PE-16, 2007 edition;

(d) "Application for License Renewal Resident School", Form PE-17, 2007 edition;

(e) "Application for License Renewal Non-Resident School", Form PE-18, 2007 edition;

(f) "Application for Permit to Act as an Agent", Form PE-19, 2007 edition;

(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2007 edition;

(h) "Application to Transfer Ownership of a School", Form PE-2, 2007 edition;

(i) "Application to Change the Name of a School", Form PE-22, 2007 edition; and

(j) "Application to Change the Location of a School", Form PE-23, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

ROBERT CURRY, Acting Executive Director

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at noon

CONTACT PERSON: Robert Curry, Acting Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone

(502) 564-4185, fax (502) 564-4248.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Curry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees, contributions, fines, and penalties which proprietary education schools licensed by the Kentucky Commission on Proprietary Education (KCPE) may be called upon to pay.

(b) The necessity of this administrative regulation: The KCPE cannot function without revenue generated by fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizes the KCPE to establish fees and to expend monies for salaries, rent, equipment, and other ordinary expenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will allow the KCPE to continue to operate and perform its statutorily mandated duties.

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

(a) How the amendment will change this existing administrative regulation: This amendment will increase some existing fees and establish new fees, contributions, fines, and penalties to be paid by proprietary education schools licensed by the KCPE.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for KCPE to operate and perform its statutorily mandated duties. These statutorily mandated duties ensure the KCPE effectively addresses its three stake holders: students; taxpayers; and member schools, to ensure all receive and provide exceptional educational services. The newly organized KCPE's actions, and focus on quality education, is based on Auditor Crit Luallen's April 20, 2011, report detailed inter alia, "material weakness" in the prior Board for Proprietary Education's management, its lack of recordkeeping and its failure to properly address complaints against schools. In addition, this amendment is based on best practices employed in the states of Indiana, Ohio, and Florida, yet modified to represent the needs of the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the KCPE to establish fees and to expend monies for salaries, rent, equipment, and other ordinary expenses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the KCPE to operate and perform its duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All proprietary education schools licensed by the KCPE will be impacted by this administrative regulation. KCPE schools are those that are not regulated by the Council on Postsecondary Education. There currently are a total of 146 schools licensed by the KCPE (105 resident and forty-one (41) nonresident). Students who attended proprietary education schools that are closed, as well as commercial firms, may be impacted by this administrative regulation if they request transcripts from the closed schools. Approximately 390 transcript requests are received per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are some new fees that may have to be paid. Otherwise, the schools have paid fees for licensure, etc. in the past and will continue to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will depend, in large part, on the number of students and whether the school is located within or without the state, as is required by statute. All proprietary schools have paid

fees for licensure, etc. in the past and will continue to do so, however, there is an increase in those fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will enable the KCPE to meet the mandates set forth in statute to provide quality educational services to all citizens of the Commonwealth. This first fee increase in over ten (10) years will provide the schools, taxpayers, and students with: 1) annual onsite visits; 2) employment of two (2) professional staff members to review student complaints and evaluate member applications and quality of programs; and 3) enhanced online presence to communicate student rights along with provide annual reporting services to track program (school) quality.

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

(a) Initially: No additional costs above those currently incurred in licensing and regulating proprietary schools.

(b) On a continuing basis: No additional costs above those currently incurred on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding will be the revenue generated by the fees paid by the proprietary schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation increases a number of fees charged by the KCPE in order to meet the statutory mandates in order to provide citizens of the Commonwealth an effectively regulated academic experience as governed by the KCPE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation establishes new fees as well as directly increases other fees. It aligns with fees administered by other states along with ensuring fiscal solvency of the KCPE to manage quality education programs.

(9) TIERING: Is tiering applied? Tiering is applied based on the gross revenue of a school and whether the school is a resident or a nonresident school.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None should be impacted other than KCPE.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340 and KRS 165A.400

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is anticipated the amended fee structure will generate approximately \$250,000 for the first fiscal year for the operation of the KCPE.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated the amended fee structure will generate approximately \$250,000 for each fiscal year thereafter for the operation of the KCPE.

(c) How much will it cost to administer this program for the first full year? This program will not cost any additional dollars to administer for the first full year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional dollars to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amended After Comments)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions. (1) "Affiliate" means an entity:

- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

- (a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and
- (b) Exercises that power:

1. Alone or through one (1) or more intermediary companies[, or alone];

2. In conjunction with, or pursuant to an agreement;

3. Through ownership of ten (10) percent or more of the voting securities;

4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;

5. By contract; or

6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(10) "Party" means a person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of

this administrative regulation; or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

~~(12) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).~~

(13) "Signature" means a manual, facsimile, conformed, or electronic signatures.

~~(13)(14)~~ "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

~~(14)(15)~~ "Utility" is defined by KRS 278.010(3).

~~(15)(16)~~ "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

~~(16)(17)~~ "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director. (1) Upon request, the executive director shall:

(a) Advise as to the form of a paper desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney or record or submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party; ~~or~~

2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3. (Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3.) Sending a copy by electronic mail [means] to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail [means] shall comply with Section 8(4) of this administrative regulation [and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site].

(e) [(c) If good cause exists to excuse the party from receiving a copy by electronic means, service of papers on the party shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(d)] Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. [it] Is physically received by the executive director at the commission's offices during the commission's official business

hours; ~~and~~

~~2. [and the paper]~~ Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a ~~person [party]~~ files a paper containing ~~personal information, the person [party] shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include [includes]~~ an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements [an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read]:

1. The digits of ~~a [the]~~ Social Security number or taxpayer identification number;

2. The month and ~~date [day]~~ of an individual's birth; ~~[and]~~

3. The digits of ~~an [the financial]~~ account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government; ~~[or]~~

6. "Individually identifiable health information" as defined by ~~[in]~~ 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. Other individually identifiable contact information.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark; ~~[;]~~ that so obscures the identifiers that ~~the identifiers [they]~~ cannot be read.

~~(c) [Each party shall] [The executive director shall not] [be required to review a paper] [papers] [for compliance with this section.]~~ The responsibility to **review for compliance with this section and** redact a ~~paper [document]~~ shall rest with the party that files the ~~paper [document]~~.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but **the party** is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the

subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if **the party [it]** obtains information **that [which]** indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for **the [its]** failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated **if [where]** rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case

shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4)(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per

inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) ~~or (b)~~ of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that:

1. ~~The party waives any right to service of commission orders by United States mail; and~~

2. the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. ~~The party waives any right to service of commission orders by United States mail; and~~

2. the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address in accordance with Section 4(8) of this administrative regulation.

(12)(a) A paper shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as ~~established~~~~[expressly provided]~~ in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint~~[to the commission's satisfaction]~~; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time ~~and~~ not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

~~(a)~~ The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

~~(b)~~ The commission may~~[also]~~, through its own experts, ~~[or]~~employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated

by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified~~[,]~~ or otherwise authenticated~~[,]~~ copies of the documents or relevant portions~~[of the same as may be relevant]~~, or may require evidence to be entered as a part of the record.

~~(2)(a)~~ If relevant and material matter offered in evidence by any party is ~~part of~~~~embraced in~~ a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

~~(b)~~ If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record~~[, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper, or document, and to offer evidence in like manner other portions thereof if found to be material and relevant]~~.

~~(3)(a)~~ The sheets of each exhibit shall be numbered.

~~(b)~~ If practical, the lines of each sheet shall also be numbered.

~~(c)~~ If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

~~(d)~~ Rate comparisons and other evidence shall be condensed into tables.

~~(4)~~ Unless so ordered by the commission~~[Except as expressly permitted in particular instances]~~, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission's own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record. A record of the type

established in this subsection shall be by "reference only."

~~[(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.]~~

~~[(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.]~~

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions redacted[obscured] for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that[which] unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document,

written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established[enumerated] in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion[it] is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted[unobscured] copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds upon which the material should be classified as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that[which] unless redacted would disclose confidential material.

a. Text pages or portions thereof that[which] do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for which the material should be considered as confidential and shall advise the requestor of the[his or her] determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the[his or her] decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential

material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material. (a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as

confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed ~~or considered~~ to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct ~~that party~~ him to demonstrate within twenty (20) days of ~~his~~ receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the ~~party~~ he is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. ~~Otherwise,~~ The commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for ~~the information~~ same.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state ~~if whether~~ it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state ~~if whether~~ it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;

2. The name of the governmental agency offering the franchise;

3. The type of franchise offered; and

4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application for a

certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner ~~of the construction in which same will be constructed,~~ and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice[; and

~~6. If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present~~

~~testimony, to that governing body].~~

(2) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts[~~prescribed by the commission~~];

(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(o) A list of all commercially available or in-house developed

computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;
 2. What the software, program, or model was used for;
 3. **[identify]** The supplier of each software, program, or model;
 4. A brief description of the software, program, or model; and
 5. The specifications for the computer hardware and the operating system required to run the program;
- (p) Prospectuses of the most recent stock or bond offerings;
- (q) **The** annual report to shareholders^[,] or members^[,] and statistical supplements covering the two (2) most recent years from the utility's application filing date;
- (r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;
- (s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;
- (t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:
1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;
 2. An explanation of how the allocator for the test period was determined; and
 3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;
- (u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
- (v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as **[specifically]** directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:
1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
 2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:
 - a. Based on current and reliable data from a single time period; and
 - b. Using generally recognized fully allocated, embedded, or incremental cost principles.
- (5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:
- (a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;
 - (b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;
 - (c) For each proposed pro forma adjustment reflecting plant additions, **[provide]** the following information:
 1. The starting date of the construction of each major component of plant;
 2. The proposed in-service date;
 3. The total estimated cost of construction at completion;
 4. The amount contained in construction work in progress at the end of the test period;
 5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;
2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. Sales volume forecasts ~~in~~[-]cubic feet (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of other information provided, if applicable;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart~~[prescribed by the commission]~~;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(t) A list of all commercially available or in-house developed

computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3.~~[identify]~~ The supplier of each software, program, or model;

4. A brief description of the software, program, or model; ~~and~~

5. The specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than \$5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as~~[specifically]~~ directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for

the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon[When] filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers~~or is a sewage utility~~, the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers~~and is not a sewage utility~~, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county~~and is not a sewage utility~~ may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with

terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions

filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an[When the complainant files his or her] original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be filed within a shorter or longer period.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant[it] may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services

referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;

(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014[July 2012];

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director

Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission conducts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment codifies Commission practices for delivering its orders by means of electronic

transmission rather than by mail, eliminates the requirement that sewage utilities mail customer notices, eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body, expands information that must be redacted when filing applications.

(b) The necessity of the amendment to this administrative regulation: This amendment incorporates Commission practices that have not been codified in the Commission's regulations. This amendment reflects changes in the method of the delivery of the commission's orders by electronic transmission mandated by the recent revision of KRS 278.380, and complies with SB 123, HB 5, and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more guidance to utilities in regards to proceedings before the Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all utilities regulated by the Public Service Commission and all persons who make an appearance or otherwise participate in Commission proceedings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The utilities will be responsible for providing the Commission with their electronic mail address or will need to provide good cause for mail delivery. Additionally, the utilities will need to redact personal information before filing documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to comply with this amendment, and will indeed lessen certain costs. The proposed amendment eliminates several filing requirements. It clarifies several uncertainties in the existing regulation and will likely lessen the number of actions that parties to a Commission proceeding must take to ensure compliance with the Commission's procedural rules.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarity regarding proceedings before the Commission. It harmonizes the Commission's rules regarding delivery of its orders with the existing capabilities of the Commission's filing system. Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendments for any governmental agency. The proposed amendments do not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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

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

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended After Comments)**

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment to recover the cost of water purchased.

Section 1. Definitions. (1) "Application" means:

(a) A completed Purchased Water Adjustment Form 1;

(b) A schedule listing current and proposed rates;

(c) A copy of the supplier's notice showing a change in supplier's base rate;

(d) The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation; and

(e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and

(f) If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers reside and the date it presented testimony, or is scheduled to present testimony, to that governing body].

(2) "Changed rate" means the rate of a utility's supplier after the most recent increase or decrease in the supplier's base rate.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Person" is defined by KRS 278.010(2).

(5) "Supplier's base rate" means the rate of a utility's supplier in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of water service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Supplier's Base Rate. (1) Upon an increase in its supplier's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased purchased water costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the supplier's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a purchased water adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased purchased water costs on a per unit basis regardless of customer classification.

Section 3. Purchased Water Adjustment Factor. (1) The purchased water adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$\text{PWA Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Utility Water Purchases}) - (\text{Base Rate} \times \text{Total Utility Water Purchases})}{\text{Total Utility Water Sales}}$$

(2) The purchased water adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(3) Total utility water purchases shall be determined based upon the level of water purchases for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4)(a) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(b) If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total utility water purchases and total water utility sales.

Section 4. Submitting the Purchased Water Adjustment

Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the supplier's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

Section 5. Notice. Upon filing an application for a purchased water adjustment resulting from a supplier's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate;**[or]**

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate;**or**

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order approving an adjustment to the utility's rates pursuant to this administrative regulation:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;**[or]**

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication;**or**

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving **or denying** the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner prescribed in Section 5(2) of this administrative regulation.

Section 7. Refund from a Supplier. (1) A utility that receives a refund from its supplier for previously paid for water service due to a reduction in the supplier's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the supplier's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customers' bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor upon calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Purchased Water Adjustment Form 1", **July 2014[Purchased Water Adjustment for Water Districts and Associations, July 2013]**, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the

commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for water districts and water associations to pass its purchased water costs through to its customers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for a water district or water association to adjust its rates in accordance with a rate adjustment from its wholesale water supplier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district or water association to pass through changes in costs of the water it purchases.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with HB 192 which was became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. This amendment eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(d) How the amendment will assist in the effective administration of the statutes: The amendment benefits water districts by eliminating the requirement to present testimony or be scheduled to present testimony to its governing body when requesting fee increases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will affect water districts that purchase water from a wholesale provider.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required. This amendment eliminates a requirement for the water district when requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Water Districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division; water districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing purchased water adjustment applications is expected to result from the adoption of the proposed amendment. The Public Service commission will be performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended After Comments)

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

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.012, 278.015, 278.030, 278.040

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030(1), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.030(1) requires that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This administrative regulation establishes the requirements under which a water district or a water association may implement a treated sewage adjustment to recover the costs of treated sewage.

Section 1. Definitions. (1) "Application" means:

- (a) A completed Treated Sewage Adjustment Form 1;
- (b) A schedule listing current and proposed rates;
- (c) A copy of the provider's notice showing a change in provider's base rate;
- (d) The calculation and all supporting documents used to determine the change in treated sewage costs sufficient to determine the accuracy of the calculation; and
- (e) A copy of the resolution or other document of the utility's governing body authorizing the proposed rates; and
- (f) ~~If the applicant is a water district and proposes to increase any of its rates for service, a statement from an authorized official of the district indicating the date its proposed rate adjustment was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body].~~

(2) "Changed rate" means the rate of a utility's provider after the most recent increase or decrease in the provider's base rate.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Person" is defined by KRS 278.010(2).

(5) "Provider's base rate" means the rate of a utility's provider in effect immediately prior to the most recent increase or decrease.

(6) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(7) "Utility" means:

(a) A water association formed as a non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of sewage service; or

(b) A water district formed pursuant to KRS 65.810 and KRS Chapter 74.

(8) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Change in Provider's Base Rate. (1) Upon an increase in its provider's base rate, a utility may, without prior commission approval, increase each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its increased treated sewage costs to its customers on a per unit basis regardless of customer classification.

(2) Upon a decrease in the provider's base rate, a utility that has previously revised its rates pursuant to this administrative regulation shall decrease each of its rate schedules by a treated sewage adjustment factor determined in accordance with Section 3 of this administrative regulation to pass through its decreased treated sewage costs on a per unit basis regardless of customer classification.

Section 3. Treated Sewage Adjustment Factor. (1) The treated sewage adjustment factor to adjust a utility's rate to reflect a change in the utility's base rate shall be determined using the following formula:

$$TSA \text{ Adjustment Factor} = \frac{(\text{Changed Rate} \times \text{Total Treated Sewage}) - (\text{Base Rate} \times \text{Total Treated Sewage})}{\text{Total Utility Water Sales}}$$

(2) The treated sewage adjustment factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(3) Total treated sewage shall be determined based upon the level of treated sewage for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(4)(a) Total utility water sales shall be determined based upon the level of water sales for a period of twelve (12) consecutive months ending within ninety (90) days immediately prior to the effective date of the utility rate adjustment month period.

(b) If the utility bases its customer billings on a flat rate in lieu of a volumetric rate, the total number of customers or residential equivalents billed for the period shall be used.

(5) The same twelve (12) month period shall be used to determine total treated sewage and total utility water sales.

Section 4. Submitting the Treated Sewage Adjustment Application. (1) A utility adjusting its rates pursuant to this administrative regulation shall submit an application to the commission.

(2) The application shall be submitted:

(a) In accordance with 807 KAR 5:001, Sections 7 and 8; and

(b) No earlier than thirty (30) days prior to the proposed effective date of the provider's changed rate and no later than twenty (20) days after the utility, without prior commission approval, adjusts its rates to reflect the change in its treated sewage costs due to the provider's changed rate.

Section 5. Notice. Upon filing an application for a treated sewage adjustment resulting from a provider's increased rate, a utility shall provide notice as follows:

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission or the date the utility adjusts its rates, whichever occurs first, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice. (a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the issuance of the first bill at the increased rate;

2. Mailing a written notice to each customer no later than the issuance of the first bill at the increased rate;

3. Publishing notice one (1) time in a prominent manner in a newspaper of general circulation in the utility's service area no later than the issuance of the first bill at the increased rate; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the issuance of the first bill at the increased rate.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection. A utility shall mail a written notice to each customer no later than the issuance of the first bill at the increased rate.

(3) Proof of Notice. A utility shall file with the commission no later than thirty (30) days from the date of the commission's order

approving an adjustment to the utility's rates pursuant to this administrative regulation;

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;~~for~~

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the date of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The effective date;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address); and

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

Section 6. Orders of the Commission. (1) Within thirty (30) days of the submission of an application in accordance with this administrative regulation, the commission shall enter its order approving or denying the proposed rates or establishing revised rates.

(2) Within twenty (20) days of the date of the commission's order, the utility shall submit its revised tariff sheet in accordance with 807 KAR 5:011 establishing the rates approved by the commission.

(3) If the utility publishes notice of the proposed rates and the commission enters an order requiring different rates, the utility shall publish notice of the commission ordered rates in the manner established in Section 5(2) of this administrative regulation.

Section 7. Refund from a Provider. (1) A utility that receives a refund from its provider for previously paid for treated sewage due to a reduction in the provider's rate shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section. The notice to the commission shall include:

(a) A description of the circumstances surrounding the refund;

(b) A schedule showing the calculation of the refund factor;

(c) A copy of the provider's notice of the refund; and

(d) All supporting documents used to determine the refund factor in detail sufficient to determine the accuracy of the calculation.

(2) Refund factor. (a) The refund factor shall be determined using the following formula:

$$\text{Refund Factor} = \frac{\text{Refund Amount}}{\text{Estimated Total Utility Water Sales}}$$

(b) The refund factor shall be expressed in cents per gallons or cubic feet, depending upon the unit of measure that the utility bases its customer bills.

(c) Estimated total utility water sales shall be determined based upon the estimated level of water sales for the two (2) month period beginning the first day of the month following the utility's receipt of the refund. If the utility bases its customer billings on a

flat rate in lieu of a volumetric rate, the estimated total number of customers or residential equivalents billed for the period shall be used.

(3) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility shall reduce each of its rate schedules by the refund factor when calculating customer bills for the next two (2) billing periods.

(4) If the commission determines that the utility has inaccurately calculated the refund, the commission shall direct the utility to make revisions to the utility's refund plan.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 9. Incorporation by Reference. (1) "Treated Sewage Adjustment Form 1", July 2014~~[Treated Sewage Adjustment for Water Districts and Associations, July 2013]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-3460, email Stephanie.Bell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for water districts and water associations that provide sewage service to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a timely and simplified method for water districts and water associations that provide sewage service to adjust its rates to pass through to its customers the cost it pays another entity to treat its customer's sewage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a cost effective and timely method for a water district and water association that provides sewage service to adjust its rates to pass through to its customers changes in costs it pays another entity to treat its customer's sewage.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123 and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030(1) provides that all rates charged by a utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. This amendment prescribes the requirements under which a water district or a water association may implement a treated sewage adjustment designed

to recover the actual costs of treated sewage.

(d) How the amendment will assist in the effective administration of the statutes: The amendment benefits sewage utilities by eliminating the requirement that it mail customer notices. Water districts no longer have to present testimony or be scheduled to present testimony to its governing body when requesting fee increases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect water districts and water associations providing sewage service that pay another entity to treat its customer's sewage.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation does not require any additional action by the regulated entities identified in question 3.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: The amendment will not involve additional costs

(b) On a continuing basis: No additional costs are expected.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service commission's cost of

reviewing treated sewage adjustment applications is expected to result from the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing treated sewage adjustment applications is expected to result from the adoption of this administrative regulation. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amended After Comments)

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

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180[~~278-185~~], 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180[~~278-185(4)~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:

(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or

(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1), requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.

(4) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; or

(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Rate" is defined by KRS 278.010(12).

(6) ["Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(7) "Utility" is defined by KRS 278.010(3).

(7) ["(8) "Water district" means a special district or special purpose governmental entity created pursuant to KRS Chapter 74.

(8) ["(9) "Web site" means an identifiable site on the Internet, including social media, which is accessible to the public.

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

(1) Had gross annual revenue in the immediate past calendar year of \$5,000,000 or less;

(2) Maintained [adequate] financial records fully separated

from a commonly-owned enterprise; and

(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;

(2) ~~[The]~~Application required by Section 4 of this administrative regulation;

(3) Information supplied by the parties in response to requests for information;

(4) Written reports submitted by commission staff;

(5) Stipulations and agreements between the parties and commission staff;

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in a written report that commission staff submitted; and

(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of a:

(a) Completed Application for Rate Adjustment before the Public Service Commission, [A completed] ARF Form-1, that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters established in the application;

(b) ~~[A]~~Copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) ~~[A]~~Copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) ~~[A]~~Depreciation schedule of all utility plant in service;

(e) ~~[A]~~Copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) ~~[A]~~Detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) ~~[A]~~Copy of the notice of the proposed rate change that is provided to customers of the applicant; and

(h) Statement of Disclosure of Related Transactions, [A completed] ARF Form-3, for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer[; and

~~(i) If a water district proposes to increase any current rate for service or implement a new rate for service, a statement from an authorized official of the district indicating the date the proposed rate increase or new rate was reported to the governing body of the county in which the largest number of its customers resides and the date it presented testimony, or is scheduled to present testimony, to that governing body].~~

(2) Except as provided in 807 KAR 5:001, Section 8 for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3) Each party filing documents with the commission shall be responsible for reviewing and redacting any personal identifying information in compliance with the rules and procedures set forth in 807 KAR 5:001, Section 4(10)[(a) If the application contains an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

~~(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read].~~

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice. Upon filing an application for an alternative rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers~~[or is a sewage utility]~~, it shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers~~[and is not a sewage utility]~~, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county~~[and is not a sewage utility]~~ may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through the commission's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

Section 6. Except as provided in 807 KAR 5:001, Section 8(2), an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure established in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 8. Amendment of Proposed Rates. (1) Except ~~if~~when responding to the findings set forth in a commission staff report filed in accordance with Section 11 of this administrative regulation, an applicant shall not amend the proposed rates set forth in its application unless the applicant:

(a) Files written notice of the proposed amendment with the commission; and

(b) Publishes notice of the amended proposed rates in the manner provided in Section 5 of this administrative regulation.

(2) An applicant shall not place amended proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of the written notice of proposed amendment, whichever occurs first.

(3) If the commission has not issued an order within six (6) months from the date of filing of the notice of amended proposed rates, the applicant may place the amended proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect but shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom a refund is due if the commission orders a refund.

Section 9. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 10. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for

information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) Upon serving requests upon the applicant, the party shall file a copy of the party's requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 11. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties if commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. A request for hearing or informal conference, if applicable;

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on if the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party's written response fails to contain an objection to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived all objections to that finding or recommendation. A party's failure to request a hearing or informal conference in the party's written response shall be deemed a waiver of all rights to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived all objections to the findings and recommendations contained in the report and all rights to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent of the total increase in revenues that the applicant's proposed rates will produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Section 12. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to the applicant's customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than

seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 13. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) An applicant that is a water district, corporation, partnership, or limited liability company shall, at a hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 14. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in 807 KAR 5:001, Section 8, are used, if a document in paper medium is filed with the commission, five (5) additional copies in paper medium shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Except for ARF Form-1 and ARF Form-3, each filing shall be in type no smaller than twelve (12) point, except footnotes, which shall be in type no smaller than ten (10) point.

(d) Binding. A side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in 807 KAR 5:001, Section 8, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A document submitted by facsimile transmission shall not be accepted.

Section 15. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. Upon an applicant's election of the use of electronic filing procedures within the time limits established in 807 KAR 5:001, Section 8(2), the procedures established in 807 KAR 5:001, Section 8, shall be used in lieu of other filing procedures established in this administrative regulation.

Section 16. The provisions of 807 KAR 5:001, Sections 1 through 6, 8 through 11, and 13, shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 17. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Rate Adjustment before the Public Service Commission", ARF Form 1, July 2014~~[November 2013]~~; and

(b) "Statement of Disclosure of Related Party Transactions", ARF Form 3, November 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov/>.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

CONTACT PERSON: Stephanie Bell, Deputy Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax

(502) 564-3460, email Stephanie.Bell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Bell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that sewage utilities mail customer notices. The sewage utility may now provide customer notice in the same manner as other utilities. The amendment also eliminates the requirement for water districts requesting fee increases to present testimony or be scheduled to present testimony to its governing body. Further, the amendment establishes that the filing party is responsible for redacting personal information.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with SB 123, HB 5, and HB 192 which became law during the 2014 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by eliminating the requirement that sewage utilities mail customer notices and eliminating the requirement that water districts seeking a fee increase present or schedule to present testimony to its governing body. The amendment notifies the utility that it is responsible for

redacting personal information prior to filing documents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect jurisdictional utilities filing an alternative rate application. .

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The proposed amendment will require utilities to redact personal information..

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sewage utilities are no longer required to mail customer notices. Sewage utilities may publish notice in the same manner as other utilities. Water districts seeking fee increases are no longer required to present or schedule to present testimony to its governing body.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

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

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

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than \$5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); jurisdictional utilities using the alternative rate filing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 - .192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. No direct increase in costs will result from the adoption of proposed amendment for any governmental agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

900 KAR 6:055. Certificate of need forms.

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" is defined by KRS 216B.015(6)(f)(5).

Section 2. Forms. (1) OHP - Form 1, Letter of Intent, shall be filed by an applicant~~[all]~~~~[applicants]~~ for a certificate of need pursuant to the requirements established in 900 KAR 6:065.

(2) OHP - Form 2A, Certificate of Need Application, shall be filed by an applicant~~[applicants]~~ for a certificate of need unless the application is for~~for other than~~ ground ambulance services.~~[providers or]~~ change of location, replacement, or cost escalation.

(3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by an applicant~~[applicants]~~ for

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a certificate of need for a ground ambulance service[providers].

(4) OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition, shall be filed by an applicant[applicants] for a certificate of need for change of location, replacement, cost escalation, or acquisition.

(5) OHP - Form 3, Notice of Appearance, shall be filed by a person who wishes[persons that wish] to appear at a hearing.

(6) OHP - Form 4, Witness List, shall be filed by a person who elects[persons that elect] to call a witness[witnesses] at a hearing.

(7) OHP - Form 5, Exhibit List, shall be filed by a person who elects[persons that elect] to introduce evidence at a hearing.

(8) OHP - Form 6, Cost Escalation Form, shall be filed by a facility[facilities] that elects[elect] to request an administrative escalation.

(9) OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(10) OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(11) OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(12) OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment, shall be filed by any health facility which adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.

(13) OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility which reduces or terminates a health service[,] or reduces bed capacity.

(14) OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

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

(a) "OHP - Form 1, Letter of Intent", 05/2009;

(b) "OHP - Form 2A, Certificate of Need Application", 05/2014[05/2009];

(c) "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service[Providers]", 05/2009;

(d) "OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition", 05/2009;

(e) "OHP - Form 3, Notice of Appearance", 05/2009;

(f) "OHP - Form 4, Witness List", 05/2009;

(g) "OHP - Form 5, Exhibit List", 05/2009;

(h) "OHP - Form 6, Cost Escalation Form", 05/2009;

(i) "OHP - Form 7, Request for Advisory Opinion", 05/2009;

(j) "OHP - Form 8, Certificate of Need Six Month Progress Report", 05/2014[05/2009];

(k) "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service", 05/2009;

(l) "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment", 05/2009;

(m) "OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity", 08/2014[05/2009]; and

(n) "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 05/2009.

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

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services,

275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference certificate of need forms. OHP - Form 8, the Certificate of Need Six Month Progress Report form is filed by a holder of a certificate of need whose project is not fully implemented to demonstrate compliance with statutory and regulatory certificate of need implementation requirements. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, which was revised in the Amended After Comments administrative regulation, is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B. 040(2)(a)1, KRS 216B.086 and KRS.216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference various forms required for the certificate of need program. OHP - Form 8 Certificate of Need Six Month Progress Report is required to be submitted by certificate of need holders to document progress toward implementation of outstanding certificates of need. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.086 authorizes the Cabinet to revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation. OHP - Form 8 is utilized by certificate of need holders to report progress made toward implementation of outstanding certificates of need. KRS 216B.040(2)(a)1 requires the Cabinet to promulgate administrative regulations as necessary for the administration of the certificate of need program. OHP-Form 2A is the application for nonsubstantive and formal review applications. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(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 revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable. OHP-Form 10B is revised to address reduction of a health service.

(b) The necessity of the amendment to this administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. The current form is not adequate to gauge compliance with KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable. OHP-Form 10B is revised to address reduction of a health service.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised OHP - Form 8 Certificate of Need Six Month Progress Report, OHP-Form 2A Certificate of Need Application, and OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A revisions will be consistent with KRS 216B.095 in that nonsubstantive review applications shall be required to address consistency with the State Health Plan, if applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately 250 progress reports are required to be submitted by CON holders. Annually approximately 150 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which have certificates of need which have not been implemented are required to submit progress reports to the Cabinet utilizing OHP - Form 8. CON applicants will utilize OHP-Form 2A to submit CON application. Licensed health services/facilities will utilize OHP-Form 10B to report a termination or reduction of a health service or a reduction of bed capacity.

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

(c) as a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 9:100. Nonsubstantive review applications shall be required to address consistency with the State Health Plan when completing OHP-Form 2A.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city which hold unimplemented certificates of need are required to submit certificate of need six month progress reports. Health care facilities owned by the state, county or city will be required to submit certificate of need applications for the establishment or change in a health service.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.086

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:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

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

RELATES TO: KRS 216B.010, ~~216B.090~~[216B.040], 216B.990
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040[(2)(a)+,]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.040(2)(a)2 requires the cabinet to promulgate an administrative regulation establishing the criteria for issuance and denial of certificates of need. This administrative regulation establishes the requirements necessary for the consideration for formal review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Days" means calendar days, unless otherwise specified

(3) "Formal review" means the review of an application[applications] for certificate of need which is[are] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[are] reviewed for compliance with the review criteria set forth at KRS 216B.040 and in this administrative regulation.

(4) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(5) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of an application[applications] under formal review shall be limited to the [following] considerations established in this section.[-]

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(c) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(d) An application seeking to re-establish a licensed healthcare facility or service that was provided at the healthcare facility and which was voluntarily discontinued by the applicant shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent Certificate of Need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to re-establish;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the[applicant's] [applicant has identified a need for the] proposal in[for]in the geographic service area defined in the application; and is consistent with criteria, inventories, and need analysis figures maintained by the cabinet and the State Health Plan, referenced in subsection (1) of this section, and the applicant has demonstrated that it is able to meet the need identified by the criteria, inventories, and need analysis maintained by the cabinet and the State Health Plan; or [and]

(b) [In the event the State Health Plan does not address the proposed health facility or service,] If the applicant has[identified a need for the proposal for the geographic service area defined in the application and has] demonstrated that it is able to meet the need identified in the geographic service area defined in the application [in the geographic service area defined in the application].

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) The cabinet shall determine if the applicant:

1. Is prepared to, and capable of undertaking and carrying out, the responsibilities involved in the proposal in a manner consistent

with appropriate standards and requirements established by the cabinet; and

2. Has the ability to comply with applicable licensure requirements.

(b) Absence of an applicable licensure category shall not constitute grounds for disapproving an application.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for formal review of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for consideration of certificate of need applications undergoing formal review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for consideration of certificate of need applications undergoing formal review.

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

(a) How the amendment will change this existing administrative regulation: The regulation is changed to clarify that in determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application. When making a final decision following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling shall be applied by the Cabinet. The Amended After Comments administrative regulation restores the original language of Section 2(2) Need.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify which documents will be relied upon in making certificate of need decisions regarding consistency with the State Health Plan. The Amended After Comments administrative regulation restores the original language of Section 2(2).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a formal review certificate of need application. Annually, approximately 150 certificate of need applications are filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application requesting formal review will be required to meet the requirements of this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will know the certificate of need application requirements for formal review.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city which submit certificate of need applications requesting formal review will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 and KRS 216B.040(2)(a)2.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

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

RELATES TO: KRS 216B.010, 216B.015, 216B.090[216B.095], 216B.455, 216B.990

STATUTORY AUTHORITY: KRS[494A.030, 194A.050,] 216B.040(2)(a)1, 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter. (9) "Therapeutic cardiac catheterization outcomes" means in-hospital mortality rates, door-to-balloon time, door-to-balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests, and emergency open heart surgeries performed as a result of the PCI.]

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b)[The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c)] The proposal involves an application to relocate or transfer [certificate of need approved acute care beds or] licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed

hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the licensed beds are relocated delicense those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II, ~~or~~ Level III, or Level IV neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

~~(c)(d)~~ The proposal involves an application by an existing licensed acute care hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, ~~or neonatal~~ Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

~~(d)(e)~~ The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, ~~or neonatal~~ Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

~~(e)(f)~~ The proposal involves an application by a psychiatric hospital to convert licensed geriatric, adult, adolescent, or child psychiatric beds to psychiatric beds and the requirements established in this paragraph are met:

1. The psychiatric hospital is located within twenty (20) miles of a United States military base;

2. The psychiatric hospital provides inpatient behavioral health services to active duty military personnel, families of active duty military personnel, and veterans;

3. The psychiatric hospital shall convert and implement the beds on-site at the existing licensed hospital; and

4. The psychiatric hospital shall delicense the same number of converted beds.

(g) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met:

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(h) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met:

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with an ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years;

(i) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met:

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

(j) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital [with fifty (50) or fewer licensed beds] and **[which]** was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service which the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

(f)(k)1. The proposal involves an application to establish an ambulatory surgical center which does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation.

(4)(3) A certificate of need approved for an application submitted under subsection (3)(f)(2)(f)(k) of this section shall state the limitations specified under subsection (3)(f)(2)(f)(k)1. and 2. of this section.

(5)(4) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(6)(5) If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(6)(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the application[applicant] is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If[unless] the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications[but] may be consolidated for hearing purposes.

(8)(7) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Planand an application granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(9)(8) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status[if:

(a) ~~The application does not propose a capital expenditure; or~~

(b) ~~The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (7) of this section has been rebutted by clear and convincing evidence by an affected party].~~

(10)(9) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application[Applicant] is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8)(7) of this section has been rebutted by clear and convincing evidence by an affected party.

(11)(10) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and

need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(12)(11) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(13)(12) A decision to approve or disapprove an application which has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(14)(13)(14) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for review of certificate of need applications which are granted nonsubstantive review.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1 and KRS 216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for consideration of nonsubstantive review of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.095 allows a certificate of need applicant to waive a formal review process and request nonsubstantive review if specific conditions are met. This regulation establishes the requirements necessary for consideration of nonsubstantive review of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: The regulation is being revised to be consistent with KRS 216B.095(4) to require the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application. Also, the amendment will delete select proposal scenarios from the listing of proposals that may be granted nonsubstantive review status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a nonsubstantive review certificate of need application. Annually, approximately 150 certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application requesting nonsubstantive review will be required to meet the requirements of this regulation, including the amendment to require a nonsubstantive review application to address consistency with the State Health Plan if the Plan addresses the proposed service.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county, or city which submit certificate of need applications requesting nonsubstantive review will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 and KRS 216B.095.

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:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(Amended After Comments)

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

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for:

(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or

(b) Hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or

outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient hospitalization records. A hospital[Hospitals] shall document every hospitalization it provides[they provide] on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital[Hospitals] shall document on a Standard Billing Form the outpatient services it provides[they provide] and shall from every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) A hospital[Hospitals] shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital[Hospitals] shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient services records.

(a) An ambulatory facility[facilities] shall document on a Standard Billing Form the outpatient services it provides[they provide] and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) An ambulatory facility[facilities] shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility[facilities] shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on a hospitalization[hospitalizations] shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital

shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital[hospitals] shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility[facilities] shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider[All providers] shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider[Providers] shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Each provider[Providers] shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider[Providers] may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider[providers] thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider[Providers] shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) A provider[Providers] experiencing extenuating circumstances or a hardship[hardships] may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider[Providers] shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver[Extensions and waivers] shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal[Appeals] shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in

accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers. (1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. (1) A hospital[Hospitals] shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) A single asterisk identifies[Asterisks identify] elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(4) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	**Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	**Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	**Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
<u>Yes[No]</u>	**Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
<u>Yes[No]</u>	*Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
<u>Yes[No]</u>	*Principal Diagnosis Code present on admission identifier for non-Medicare claims

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Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	**Secondary and Other Diagnosis Codes[if present]
Yes[No]	**Secondary and Other Diagnosis code present on admission identifier[if present] for non-Medicare claims
Yes	**Secondary and Other Diagnosis code present on admission identifier[if present] for Medicare claims
Yes[No]	Inpatient Admitting Diagnosis[or Outpatient reason for visit]
Yes	**Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
Yes[No]	*External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	**Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
Yes[No]	*Operating Clinician ID Number/NPI
Yes[No]	**Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
[Yes]	*Procedure Coding Method

Section 13. Required Data Elements for Ambulatory Facilities.(1) **An** ambulatory **facility[facilities]** shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) **A single asterisk identifies[Asterisks identify]** elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) **Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.**

(4) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	**Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	**Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
Yes[No]	**Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	**1st Insurer Group #

Yes[No]	**2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	**Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
Yes[No]	**Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised **August[October]**[January] 1, 2014; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised **August[October]**[January]1, 2014.

(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 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the Cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation incorporates by reference the data submission manuals for hospitals and ambulatory care facilities. Revisions to the manuals were necessary to change the ICD-10-CM/PCS implementation date from October 1, 2014 to October 1, 2015. Three new payer codes were added in the Amended After Comments administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to ensure that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the Cabinet to publish the data and reports as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with the statute.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals. Revisions to the manuals were necessary to change the ICD-10-CM/PCS implementation date from October 1, 2014 to October 1, 2015. Three (3) new payer codes were added in the Amended After Comments administrative regulation.

(b) The necessity of the amendment to this administrative regulation: On April 1, 2014, President Obama signed the

Protecting Access to Medicare Act of 2014 which delayed the implementation of ICD-10-CM/CPS until 2015. This amendment is necessary to revise the data submission manuals accordingly

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by providing as standardized method of reporting by hospitals and ambulatory care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions for submission of required data elements.

(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 229 hospitals and ambulatory facilities which submit data to the Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data. This administrative regulation incorporates by reference data reporting manuals, which were revised to change the implementation of the ICD-10-CM/PCS from October 1, 2014 to October 1, 2015. Three (3) new payer codes were added in the Amended After Comments administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data. This regulation incorporates by reference manuals that were revised to provide detailed submission requirements. Therefore, no additional cost will be incurred by entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The data reporting manuals were revised to change the implementation of the ICD-10-CM/PCS from October 1, 2014 to October 1, 2015. Three (3) new payer codes were added in the Amended After Comments administrative regulation.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation. The Office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation will be the Office of Health Policy's existing budget. No new funding will be needed to implement the provisions of the amended regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 216.2920-216.2929.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amended After Comments)

902 KAR 30:150. Personnel qualifications.

RELATES TO: KRS 200.650-200.676, 34 C.F.R. 303.31, 303.119, 303.121, 20 U.S.C. 1435(8), (9)

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provider qualifications for participation in First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll providers to carry out the early intervention services according to the provisions of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications established in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall submit an application packet to the cabinet.

(a) The application packet for the individual provider shall include:

1. A copy of the provider's professional license, registration, or certificate; and

2. The Individual Provider Application (RF 6A(I)).

(b) The application packet for the agency shall include:

1. A copy of each provider's professional license, registration, or certificate; and

2. The Agency Application (RF 6A(A)).

(c) All potential providers shall:

1. Have a background check performed by the Administrative Office of the Courts, the Division of Protection and Permanency, and the Sex Offender Registry, with those agencies submitting the results of each background check directly to the cabinet;

2. Agree to provide service within the individual's or agency's scope of practice and in accordance with state and federal regulations and laws relating to First Steps; and

3. Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application shall not be considered complete and shall not be processed until all information and any subsequent documentation requested by the program is provided.

(6) Upon receipt of an approved application packet, the applicant shall be notified of their eligibility to complete orientation training.~~The program shall make an enrollment determination within ninety (90) calendar days of receipt of the information required by subsections (4) and (5) of this section.~~

(7) After successful completion of orientation training~~[If the applicant is approved for enrollment]~~, the Service Provider Agreement shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes.

(8) A provider's participation shall begin and end on the dates specified in the executed Service Provider Agreement.

(9) If an agency is the enrolled provider, the agency shall be responsible for ensuring that all staff from that agency providing First Steps services meet the First Steps personnel qualifications.

(10) Provider enrollment shall be renewed every even-numbered year.

(a) An individual~~or agency~~ wishing to renew the Service Provider Agreement shall submit:

1. The Individual Provider Application (Renewal) (RF 6B);

2. A copy of their current licensure for their discipline;

3. A signed Service Provider Agreement;

4. A notarized Multi-provider affidavit;

5. A signed First Steps Provider Code of Ethical Conduct;

6. A completed First Steps Record of Provider Signature (RF-

23);

7. A Service Catchment Area;

8. A copy of current professional liability insurance;

9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);

10. Request for Taxpayer Identification Number and Certification (W-9); and

11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement.

(b) An agency wishing to renew the Service Provider Agreement shall submit:

1. The Agency Application (Renewal) (RF 6B(A));

2. A copy of the current licensure for all service providers listed on the agency application;

3. A Service Provider Agreement signed by the agency administrator;

4. A notarized Multi-provider affidavit;

5. A signed First Steps Provider Code of Ethical Conduct for all service providers listed on the agency application;

6. A completed First Steps Record of Provider Signature (RF-23) for all service providers listed on the agency application;

7. A Service Catchment Area for all service providers listed on the agency application;

8. A copy of current professional liability insurance for the agency;

9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);

10. Request for Taxpayer Identification Number and Certification (W-9); and

11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement for all agency staff listed on the service provider agreement~~[the documentation required by subsections (4) and (5) of this section prior to the end date specified in the Service Provider Agreement]~~.

(11) If a provider agency is enrolling to provide group services, the agency shall submit:

(a) A copy of a valid child care licensure that meets the requirements stated in 922 KAR 2:090; or

(b) Approval as a contractor for group instruction through the Kentucky Department of Education.

Section 2. Personnel Qualifications. (1) Minimum qualifications for professionals or disciplines providing services in First Steps shall be as established in this subsection.

(a) An audiologist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A licensed marriage and family therapist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have:

1. A bachelor's degree; and

2. An interdisciplinary early childhood education (IECE) certificate~~[by the Kentucky Education Professional Standards Board, Division of Certification, or be able to obtain]~~ a probationary or emergency IECE certificate, or a valid statement of eligibility for IECE certification issued by the Kentucky Educational Professional Standards Board, Division of Certification.

(d) A nurse shall have:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A dietitian shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) An occupational therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(g) An orientation and mobility (O and M) specialist shall have a bachelor's degree in Special Education with emphasis on visual impairment and O and M, in accordance with the Division of Exceptional Children Services, Kentucky Department of Education.

(h) A physician shall have:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(i) A physical therapist shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(j) A licensed psychologist shall have:

1. A doctoral degree; and

2. A license from the Kentucky Board of Examiners of Psychology.

(k) A certified psychologist with autonomous functioning, a licensed psychological practitioner, a certified psychologist or licensed psychological associate shall have:

1. A master's degree; and

2. A license or a certificate from the Kentucky Board of Examiners of Psychology.

3. A licensed psychological associate shall be under the supervision of an actively enrolled First Steps psychologist.

(l) A social worker shall have:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

(m) A speech-language pathologist shall have:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim~~[A temporary]~~ license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently enrolled First Steps speech-language pathologist.

(n) A teacher of children who are deaf and hard of hearing shall have:

1. A bachelor's degree; and

2. A certificate for teaching the hearing impaired, or a certificate for teaching the hearing impaired with sign language proficiency, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(o) A teacher of the visually impaired shall have:

1. A bachelor's degree; and

2. A certificate for teaching the visually impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A licensed professional clinical counselor shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Licensed Professional Counselors.

(q) An optometrist shall have:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of Optometric Examiners.

(r) An ophthalmologist shall have:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing services in First Steps shall be as established in this subsection.

(a) An occupational therapy assistant shall have:

1. An associate's degree in occupational therapy; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(b) A physical therapist's assistant shall have:

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

(c) Paraprofessionals shall be under the supervision of a currently enrolled First Steps provider of that discipline as required by the professionals licensing board practice act.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be as established in this subsection.

(a) A Point of Entry manager shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(b), (c), (d), (f), (i), (j), (l), (m), or (p) of this section; and

3. Have four (4) years of professional experience in an early childhood education capacity or community health agency that serves families with children birth through five (5) years of age in a position in which the following skills and competencies have been demonstrated:

a. Strong interpersonal communication skills, both written and verbal;

b. Ability to create and maintain accurate reports;

c. Ability to handle multiple tasks concurrently, meet deadlines, work independently, and exercise good judgment; and

d. Establish collaboration and leadership while working with families and service providers; and

4. Two (2) years of the experience shall demonstrate progressive responsibility in a supervisory or management capacity in a community or public health organization.

(b) A service coordinator shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(a)-(r) of this section; or

3. Have a bachelor's degree and the equivalency of two (2) years[years-of] experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years[years-of] experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships

with service providers.

(c)[(b)] A District Child Evaluation Specialist shall:

1. Be employed by the Point of Entry to conduct screening, evaluations and assessments, and provide consultation to service coordinators and initial[primary-level] evaluators;

2. Meet the minimum highest entry-level requirements for one (1) of the professions identified in subsection (1)(a)-(r) of this section;

3. Have two (2) years[years-of] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

4. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

5. Be approved by the cabinet in accordance with KRS 200.666(1).

(d)[(e)] An initial evaluator shall:

1. Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have two (2) years[years-of] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

4. Be approved by the cabinet in accordance with KRS 200.666(1).

(e)[(d)] An intensive level evaluation team shall be approved by the Part C Coordinator and shall include:

1. a. A board certified medical professional with expertise in early childhood development;

b. A board certified developmental pediatrician;

c. A pediatrician who has training and experience in the area of early childhood development;

d. A board certified pediatric psychiatrist; or

e. A board certified pediatric neurologist; and

2. One (1) or more developmental professionals identified in subsection (1)(a)-(r) of this section.

(f)[(e)] An approved neonatal follow-up program team shall be a university-based program that has:

1. Submitted to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

2. Contracted with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(g)[(f)] An assistive technology specialists shall:

1.a.(i) Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and

(ii) Have extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

b.(i) Meet the qualifications established in clause a.(ii) of this paragraph; and

(ii) Be employed by an agency that currently provides assistive technology service in First Steps; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

(h)[(g)] To be an approved assistive technology review team, an assistive technology center shall:

1. Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and

2. Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with 902 KAR 30:130, Section 4.

(i)[(h)] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

- (i) [(#)] A sign language and cued language specialist shall:
1. Meet the qualifications established in 201 KAR 39:030, Section 1(3)(c)[3-(+)(a), (b), (c), (e), (m) or (2)(a), (b), (c)]; and
 2. Be approved by the cabinet in accordance with KRS 200.666(1).

Section 3. Field Experiences - Intervention services implemented by a student. (1) With family consent, a student may provide early intervention services under the direct one-to-one supervision of a provider qualified in accordance with Sections 1 and 2 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

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

- (a) "Form 6A(I), Individual Provider Application (New)", October 2013[2012] edition;
- (b) "Form 6A(A) Agency Application (New)", October 2013[2012] edition;
- (c) "Form 6B(I) Individual Provider Application (Renewal)", November 2013[January 2012] edition;
- (d) "Form 6B(A) Agency Application (Renewal)", November 2013[January 2012] edition;
- (e) "First Steps Provider Code of Ethical Conduct", October 2013[January 2012] edition;[and]
- (f) "Form 5A, Service Provider Agreement FY 2014-2016", November 2013[January 2012] edition;
- (g) "Multi-provider affidavit";
- (h) "First Steps Record of Provider Signature (RF-23)", August 2008 edition;
- (i) "Service Catchment Area (RF 6 Attachment)";
- (j) "Authorization for Electronic Deposit of Vendor Payment (Form SAS63)", July 2006 edition; and
- (k) "Request for Taxpayer Identification Number and Certification (W-9)", January 2002 edition.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:150:

(a) What this administration regulation does: This regulation outlines the process for provider enrollment with the Kentucky Early Intervention System program and defines the minimum qualifications for the professionals or disciplines that provide early intervention services.

(b) The necessity of this administrative regulation: 902 KAR 30:150 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650(6) requires the cabinet to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families. KRS 200.666 requires the cabinet to monitor personnel standards for providers wishing to contract with Kentucky Early Intervention System.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and

regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this regulation allows for a developmental interventionist to enroll with a statement of eligibility for full certification. The regulation reference for sign and cued speech professional has been corrected. The qualifications for a teacher of the deaf and hard of hearing have been expanded to include sign language proficiency. The amendment also clarifies that a paraprofessional must work under the supervision of an actively enrolled First Steps provider of that discipline. The amendment also list out the required paperwork to renew the Service Provider Agreement, thus eliminating any delay due to missing or incomplete paperwork during the contract renewal period.

(b) The necessity of the amendment to this administrative regulation: The changes to this administrative regulation are necessary to ensure the contracted providers meet the minimum qualifications for enrollment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice. Paraprofessionals wishing to enroll as a First Steps provider must receive supervision by an actively enrolled provider of that discipline. Individuals or agencies wishing to renew the service provider agreement will be required to submit a complete application packet as described in this amendment.

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

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps system.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.652 and 200.666

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.118 through 303.119 outline the requirements for a comprehensive system of personnel development (CSPD) and personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.666 the Cabinet for Health and Family Services, Department for Public Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

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

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amended After Comments)

902 KAR 30:180. Procedural safeguards.

RELATES TO: KRS 13B.080, 13B.110, 200.672, 34 C.F.R. 303.400-303.438, 20 U.S.C. 1439

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes procedural safeguards for facilities participating in First Steps, Kentucky's Early Intervention System.

Section 1. Records. (1) In accordance with 34 C.F.R. 303.400 through 303.417, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect, review, and receive records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(2) The first requested copy of the early intervention record released to the parent or guardian shall be at no cost.

(3) A fee of ten (10) dollars shall be charged for each additional copy and shall not prevent the parent or guardian from exercising the right to inspect and review those records.

(4) An early intervention provider or agency shall inform parents when personally identifiable information collected, maintained, or used during the provision of early intervention services is no longer needed to provide services to the child.

Section 2. Parental notice and consent. (1) Prior written notice.

(a) Prior written notice shall be given to the parents of an eligible child at least five (5) working days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available to the parent;

and

4. The procedures under 34 C.F.R. 303.430-303.434.

(c) The written prior notice shall be:

1. Written in language understandable to the general public;
- and
2. Provided in the native language or other mode of communication of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
2. The parent understands the notice; and
3. There is written evidence that the requirements of this paragraph have been met.

(2) Parent consent.

(a) Written parental consent shall be obtained before:

1. Administering any screening procedures;
2. Conducting all evaluations and assessments of a child;
3. Initiating the provision of early intervention services;
4. Billing private insurance; and
5. Disclosing personally identifiable information.

(b) If consent is not given for screening, evaluation, assessment, or early intervention services, the POE shall make

reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and
2. That the child will not receive the evaluation and assessment or services unless consent is given.
- (3) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 3. Representation of Children and Surrogate Parents.

(1) Each POE shall ensure that the rights of an eligible child are protected if:

- (a) A parent, as defined in 902 KAR 30:001, Section 1(29)(28), cannot be identified;
- (b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or
- (c) The child is a ward of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

- (a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;
- (b) The rights of the parents have been terminated; or
- (c) The rights of the parents to make educational decisions have been subrogated by a court and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3)(a) If more than one (1) party meets the definition of parent under 902 KAR 30:001, Section 1(29)(28), the biological or adoptive parent shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(b) If there is a judicial order that identifies a specific person to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4)(a) A POE shall determine if a child needs a surrogate parent and, if so, shall assign a surrogate parent to the child.

(b) The surrogate parent of the child shall have all the rights afforded parents under 34 C.F.R. Part 303 to make decisions about early intervention issues for a child.

(c) A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

1. An individual cannot be identified as a parent;
2. The POE, after reasonable efforts, cannot discover the whereabouts of the parents;
3. The child is a ward of the state; or
4. The child is an unaccompanied homeless child.
- (5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, including:

- (a) Detailed records of the telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. The department shall approve a procedure that is established to ensure that a surrogate:

- (a) Is not an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in early intervention services or care of the child;
- (b) Does not have any personal or professional interest that conflicts with the interests of the child; and
- (c) Has knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) If a child is an unaccompanied homeless child, appropriate

staff of emergency shelters, transitional shelters, or street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) calendar days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent shall represent a child in all matters related to:

- (a) The evaluation and assessment of the child;
- (b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
- (c) The ongoing provision of early intervention services to the child; and
- (d) Any other rights established under this administrative regulation.

Section 4. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available if a hearing is requested under 34 C.F.R. 303.431.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints.

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not deny or delay a parent's right to a due process hearing to be conducted at any time.

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute.

(d) Mediators shall be trained in applicable state and federal law relating to the First Steps program.

(3) Time table for mediation.

(a) Within five (5) working days after a request for mediation is made to the department using a Mediation/Due Process Request Form, the appointment of a mediator shall be made.

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision.

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation.

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the lead agency who has the authority to enter into an agreement.

(f) A copy of the legally binding agreement shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department. The agreement shall specify in writing the agreement reached by the parties.

(4) A written mediation agreement shall not conflict with state and federal laws and shall be to the satisfaction of both parties. Satisfaction shall be indicated by the signature of both parties on the legally binding agreement.

(5) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.

Section 5. Due Process Procedures for Parents and Children.

(1) An administrative hearing shall be conducted within fifteen (15) days of receipt of a request for hearing by an impartial hearing

officer appointed by the secretary of the cabinet.

(2) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.080.

(3) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the family and the cabinet within ten (10) days of the administrative hearing.

(4) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(5) A final decision on the recommendation shall be made no later than **thirty (30)**~~forty-five (45)~~ days following receipt of the appeal.

(6) Any parent involved in an administrative hearing may:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

(d) Obtain a written or electronic verbatim transcription of the proceeding; and

(e) Obtain written findings of fact and decisions.

(7) Any proceeding for implementing the complaint resolution process established in Section 4 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(8) Any party aggrieved by the findings and decision regarding an administrative hearing may bring a civil action in state or federal court under 20 U.S.C. 1439(a)(1).

(9) During the pendency of any proceeding involving a hearing under this section, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

Section 6. State Complaint Procedures. The procedures established in this section shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.432-303.434.

(1) Any organization or individual may file a signed written complaint. The complaint shall be submitted on a First Steps Complaint Form and shall include:

(a) A statement that the state lead agency, point of entry, or early intervention provider has violated a requirement of state or federal law;

(b) The facts on which the complaint is based; and

(c) The signature and contact information for the complainant.

(2) If the alleged violation is with respect to a specific child, the complaint shall include:

(a) The child's name and residential address;

(b) The name of the early intervention provider serving the child;

(c) A description of the nature of the problem of the child, including facts related to the problem; and

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(3) The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health.

(4) The party filing the complaint shall forward a copy of the complaint to the point of entry or early intervention provider serving the child at the same time the party files the complaint with the state lead agency.

(5) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

(a) Carry out an independent on-site investigation, if the agency determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Provide the point of entry or early intervention provider an opportunity to respond to the complaint, including:

1. A proposal to resolve the complaint; and

2. An opportunity for a parent who has filed a complaint and the point of entry or early intervention provider to voluntarily engage in mediation, in accordance with Section 4 of this administrative regulation;

(d) Review all relevant information and make an independent determination as to whether the point of entry or early intervention provider is violating a requirement of the Kentucky Early Intervention System;

(e) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

1. Findings of fact and conclusions; and

2. The reasons for the agency's final decision;

(f) Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

(g) Include procedures for effective implementation of the state lead agency's final decision, if needed, including:

1. Technical assistance activities;

2. Negotiations; and

3. Corrective actions to achieve compliance.

(6) If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of a due process hearing, the Department for Public Health shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process action shall be resolved within the sixty (60) calendar-day timeline using the complaint procedures established in this section.

(7) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the:

(a)[a-] Hearing decision shall be binding; and

(b)[b-] Agency shall inform the complainant of that effect.

(8) A complaint alleging the state lead agency, point of entry, or early intervention provider's failure to implement a due process decision shall be resolved by the Department for Public Health.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "First Steps Complaint Form", August 2012 edition; and

(b) "Mediation/Due Process Request Form", March 2014~~May 2012~~ edition.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services,
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:180:

(a) What this administrative regulation does: This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation: Procedural safeguards are a required state component under 34 C.F.R. Subpart E 303.340 through 303.438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing

procedural safeguards.

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

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation correct the citations to other regulations. The incorporated Request for Medication/Due Process form was revised to correct the timeline from calendar to working days to be in compliance with this regulation.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to reflect the changes in referenced regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the Cabinet to administer all funds appropriated to implement administrative regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one (1) state agency), fifteen (15) points of entry/local lead agencies, 1,500 providers and 6,000 children and their families.

(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 Cabinet for Health and Family Services will need to understand the definition of parent found in 902 KAR 30:001 when determining the need for a surrogate parent appointment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does allow the Cabinet to assess a fee of ten (10) dollars for a requested copy of the early intervention record. This shall not prevent the family from exercising the right to inspect and review those records. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

regulation impacts the 15 local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1439, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

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

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

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E - Procedural Safeguards outlines the states responsibilities in assuring the rights of children and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

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

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (Amended After Comments)

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

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds [the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced practice registered nurse[practitioner]" or "APRN[ARNP]" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

~~(9) ["Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.~~

~~(10) "Communicable disease" means a disease that is transmitted:~~

~~(a) Through direct contact with an infected individual;~~

~~(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or~~

~~(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.~~

~~(11) "Consumer" is defined by KRS 205.5605(2).~~

~~(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:~~

~~(a) Assist with the design of their programs;~~

~~(b) Choose their providers of services; and~~

~~(c) Direct the delivery of services to meet their needs.~~

~~(13) "Covered services and supports" is defined by KRS 205.5605(3).~~

~~(14) "DCBS" means the Department for Community Based Services.~~

~~(15) "Department" means the Department for Medicaid Services or its designee.~~

~~(16) "Developmental disability" means a severe, chronic disability that:~~

~~(a) Is attributable to:~~

~~1. Cerebral palsy or epilepsy; or~~

~~2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an~~

~~intellectual disability;~~

~~(b) Is manifested prior to the individual's 22nd birthday;~~

~~(c) Is likely to continue indefinitely; and~~

~~(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:~~

~~1. Self-care;~~

~~2. Understanding and use of language;~~

~~3. Learning;~~

~~4. Mobility;~~

~~5. Self-direction; or~~

~~6. Capacity for independent living.~~

~~(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:~~

~~(a) 1.a. Is eighteen (18) years of age or older; and~~

~~b. Has a high school diploma or GED; or~~

~~2.a. Is twenty-one (21) years of age or older; and~~

~~b. Is able to communicate with a recipient in a manner that the recipient or recipient's legal representative or family member can understand;~~

~~(b) Has a valid Social Security number or valid work permit if not a U.S. citizen;~~

~~(c) Can understand and carry out simple instructions;~~

~~(d) Has the ability to keep simple records; and~~

~~(e) Is managed by the provider's supervisory staff.~~

~~(18) "Electronic signature" is defined by KRS 369.102(8).~~

~~(19) "Federal financial participation" is defined in 42 C.F.R. 400.203.~~

~~(20) "Home health agency" means an agency that is:~~

~~(a) Licensed in accordance with 902 KAR 20:081; and~~

~~(b) Medicare and Medicaid certified.~~

~~(21) "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.~~

~~(22) "Intellectual disability" means an individual has:~~

~~(a) Significantly sub-average intellectual functioning;~~

~~(b) An intelligence quotient of seventy (70) or below;~~

~~(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:~~

~~1. Communication;~~

~~2. Self-care;~~

~~3. Home living;~~

~~4. Social or interpersonal skills;~~

~~5. Use of community resources;~~

~~6. Self-direction;~~

~~7. Functional academic skills;~~

~~8. Work;~~

~~9. Leisure; or~~

~~10. Health and safety; and~~

~~(d) Had an onset prior to eighteen (18) years of age.~~

~~(23) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.~~

~~(24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).~~

~~(25) "Licensed practical nurse" or "LPN" means a person who:~~

~~(a) Meets the definition of KRS 314.011(9); and~~

~~(b) Works under the supervision of a registered nurse.~~

~~(26) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).~~

~~(27) "Licensed psychologist" means an individual who:~~

~~(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and~~

~~(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.~~

~~(28) "Licensed psychological practitioner" means an individual who:~~

~~(a) Meets the requirements established in KRS 319.053; or~~

~~(b) Is a certified psychologist with autonomous functioning.~~

~~(29) "Michelle P. recipient" means an individual who:~~

~~(a) Is a recipient as defined by KRS 205.8451(9);~~

~~(b) Meets the Michelle P. waiver service level of care criteria~~

established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(29)(28)(27) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(30)(29)(28) "Occupational therapist" is defined by KRS 319A.010(3).

(31)(30)(29) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(32)(31)(30) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(33)(32)(31) "Physical therapist" is defined by KRS 327.010(2).

(34)(33)(32) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(35)(34)(33) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(36)(35)(34) "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(37)(36)(35) "Plan of treatment" means a care plan used by an ADHC center.

(38)(37)(36) "Psychologist" is defined by KRS 319.010(8).

(39)(38)(37) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(40)(39)(38) "Qualified Intellectual Disability Professional" or "QIDP" is defined by KRS 202B.010(12).

(41)(40)(39) "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(42)(41)(40) "Representative" is defined by KRS 205.5605(6).

(43)(42)(41) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.

(44)(43)(42) "Sex crime" is defined by KRS 17.165(1).

(45)(44)(43) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(46)(45)(44) "Speech-language pathologist" is defined by KRS 334A.020(3).

(47) "State plan" is defined by 42 C.F.R. 400.203.

(48)(46)(45) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:

(a)1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma; or

2.a. Is twenty-one (21) years of age or older; and

b. Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(b) Is able to adequately communicate with the recipients, staff, and family members;

(c) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(d) Has the ability to perform required record keeping.

(49)(47)(46) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(50)(48)(47) "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Six (6)-month budget.

(51)(49)(48) "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health service provider; or

4. 902 KAR 20:091 if a community mental health center; or

(b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver service provider shall:

(a) Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. 907 KAR 1:673;

(c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. recipient that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP-351 and signed by the:

a. Assessment team; and

b. Department;

3. A completed MAP 109;

4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;

9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;

d. Itemization of each service delivered;

e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;

f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports

regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or
 2. For a minor, three (3) years after the recipient reaches the age of majority under state law.
- (2) Upon request, a Michelle P. provider shall make information regarding service and financial records available to the:
- (a) Department;
 - (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
 - (c) United States Department for Health and Human Services or its designee;
 - (d) United States Government Accountability Office or its designee;
 - (e) Kentucky Office of the Auditor of Public Accounts or its designee; or
 - (f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

- (a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and
 - (b) Would, without waiver services, be admitted to an ICF-IID~~[ICF-MR-DD]~~ or a nursing facility.
- (2) The department shall perform a Michelle P. waiver service level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.
- (3) A Michelle P. waiver service shall not be provided to an individual who:
- (a) Does not require a service other than:
 1. An environmental and minor home adaptation;
 2. Case management; or
 3. An environmental and minor home adaptation and case management;
 - (b) Is an inpatient of:
 1. A hospital;
 2. A nursing facility; or
 3. An ICF-IID~~[ICF-MR-DD]~~;
 - (c) Is a resident of a licensed personal care home; or
 - (d) Is receiving services from another Medicaid home and community based services waiver program.
- (4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:
- (a) Michelle P. waiver services; or
 - (b) Institutional services.
- (5) An eligible Michelle P. recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.
- (6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient's:
- (a) Termination from the Michelle P. waiver program; or
 - (b) 1. Admission to an ICF-IID~~[ICF-MR-DD]~~ or nursing facility for less than sixty (60) consecutive days; or
 2. Return to the Michelle P. waiver program from an ICF-IID~~[ICF-MR-DD]~~ or nursing facility within sixty (60) consecutive days;
 - (c) Admission to a hospital; or
 - (d) Transfer to another waiver program within the department.
- (7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:
- (a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:
 1. A statement of the intended action;
 2. The basis for the intended action;
 3. The authority by which the action is taken; and
 4. The recipient's right to appeal the intended action through the provider's appeal or grievance process;
 - (b) Submittal of a MAP-24 to the department at the time of the

intended action; and

- (c) The case manager or support broker in conjunction with the provider to:
 1. Provide the recipient with the name, address, and telephone number of each current provider in the state;
 2. Provide assistance to the recipient in making contact with another provider;
 3. Arrange transportation for a requested visit to a provider site;
 4. Provide a copy of pertinent information to the recipient or legal representative;
 5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;
 6. Continue to provide supports until alternative services are secured; and
 7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

- (1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:
- (a) Requires physical or environmental management or rehabilitation and:
 1. Has a developmental disability or significantly sub-average intellectual functioning;
 2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
 - a. Learning fundamental living skills;
 - b. Obtaining educational experiences which will be useful in self-supporting activities; or
 - c. Increasing awareness of his or her environment; or
 3. Has a primary psychiatric diagnosis if:
 - a. Possessing care needs listed in subparagraph 1 or 2 of this paragraph;
 - b. The individual's mental care needs are adequately handled in an ICF-IID~~[ICF-MR-DD]~~; and
 - c. The individual does not require psychiatric inpatient treatment.
 - (b) Has a developmental disability and meets the:
 1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
 2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).
- (2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.
- (3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:

- (a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and
 - (b) Meets the eligibility criteria established in Section 4 of this administrative regulation.
- (2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.
- (3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.
- (4) The number of individuals enrolled and receiving services in [department shall enroll into] the Michelle P. waiver program shall not exceed the limit of individuals established for the program by the Centers for Medicare and Medicaid Services[no more than:

~~(a) 3,000 individuals during the first state fiscal year (beginning July 1, 2008);~~

~~(b) A total of 4,500 individuals by the end of the second state fiscal year (June 30, 2010); and~~

~~(c) A total of 6,000 individuals by the end of the third state fiscal year (June 30, 2011)].~~

Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QDIP, or ARNP;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which:

1. Shall consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. Shall be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly, except as allowed in subparagraph 8 of this paragraph;

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care; and

d. Meet the requirements of subsection (4) of this section;

3. Shall not include a group conference;

4. Shall include development of a plan of care that shall:

a. Be completed on the MAP 109 using Person Centered Planning: Guiding Principles;

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;

5. Shall include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative;

6. Shall include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

7. Shall not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient, ~~except as allowed in subparagraph 8 of this paragraph; and~~

~~8. Contingent upon approval by the Centers for Medicare and Medicaid Services and expiring January 1, 2011, may be provided by an agency which also provides any other Michelle P. waiver service to the recipient if the agency meets the provider qualifications established in Section 2 of this administrative regulation and:~~

~~a. Provided case management to the recipient in another of the department's waiver programs prior to the establishment of the Michelle P. waiver service program; or~~

~~b. Provided other services via the Cabinet for Health and Family Services to the recipient prior to the establishment of the Michelle P. waiver service program].~~

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct-care staff;

4. Be provided to a Michelle P. recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

1. Provided by direct-care staff to a Michelle P. waiver recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:

- a. Personal care;
- b. Homemaker;
- c. ADHC;
- d. Adult day training;
- e. Community living supports; or
- f. Supported employment; and

4. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Beginning and ending time of service;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:

1. Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient;

2. Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting;

3. Used no less than every six (6) months;

4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

~~b. [Progression, regression, and maintenance toward outcomes identified in the plan of care;~~

~~c.]~~ The signature, date of signature, and title of the individual preparing the note; and

~~c.]d.]~~ The beginning and ending time of service;

(h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the Michelle P. waiver recipient's disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;

4. Be submitted on form MAP-95 for prior authorization; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers; ~~and~~

~~b. [Progression, regression, and maintenance toward outcomes identified in the plan of care; and~~

~~c.]~~ The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy which shall be:

1. A physician ordered evaluation of a Michelle P. waiver recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver recipient in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;

3. Training of other Michelle P. waiver providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes

identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(k) Speech therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;

2. Be a physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be provided by a speech-language pathologist; and

5. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service which shall:

1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a community setting which may:

a. Be a fixed location; or

b. Occur in public venues;

4. Not be diversional in nature;

5. If provided on site:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or

c. Prepare the recipient for transition from school to work or adult support services;

6. If provided off site:

a. Include services provided in a variety of community settings;

b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the recipient to be involved with other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which recipients work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the

provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;

10.a. Be provided to recipients age twenty-two (22) or older; or
b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services; and

11. Be documented with:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service which shall:

1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a recipient's personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the Michelle P. waiver recipient's file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented by:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented by a detailed staff note which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the behavioral specialist;

(o) An ADHC service which shall:

1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

c. An ARNP;

d. An RN;

e. An LPN;

f. An activities director;

g. A physical therapist;

- h. A physical therapist assistant;
 - i. An occupational therapist;
 - j. An occupational therapist assistant;
 - k. A speech pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. An LMFT;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological practitioner; and
6. Be provided pursuant to a plan of treatment. The plan of treatment shall:
- a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;
 - b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
 - c. Be developed annually from information on the MAP 351 and revised as needed; and
- (p) Community living supports which shall:
- 1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;
 - 2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:
 - a. Routine household tasks and maintenance;
 - b. Activities of daily living;
 - c. Personal hygiene;
 - d. Shopping;
 - e. Money management;
 - f. Medication management;
 - g. Socialization;
 - h. Relationship building;
 - i. Leisure choices;
 - j. Participation in community activities;
 - k. Therapeutic goals; or
 - l. Nonmedical care not requiring nurse or physician intervention;
 - 3. Not replace other work or day activities;
 - 4. Be provided on a one-on-one basis;
 - 5. Not be provided at an adult day-training or children's day-habilitation site;
 - 6. Be documented by:
 - a. A time and attendance record which shall include:
 - (i) The date of the service;
 - (ii) The beginning and ending time of the service; and
 - (iii) The signature, date of signature and title of the individual providing the service; and
 - b. A detailed monthly summary note which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
 - (iii) The signature, date of signature, and title of the individual preparing the summary note; and
 - 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, and supported employment.
- (4) A case manager shall:
- (a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:
 - 1. A QIDP;
 - 2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 4. A qualified social worker who has at least two (2) years of experience working with individuals with an intellectual or a

developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be an RN;

(c) Be an LPN;

(d) Be a qualified social worker;

(e) Be an LMFT;

(f) Be an LPCC;

(g) Be a certified psychologist; or

(h) Be a licensed psychological practitioner.

Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

(a) A home and community support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; and

5. Include:

a. Assistance, support or training in activities including meal preparation, laundry, or routine household care of maintenance;

b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;

c. Reminding, observing, or monitoring of medications;

d. Nonmedical care which does not require a nurse of physician intervention;

e. Respite; or

f. Socialization, relationship building, leisure choice or participation in generic community activities.

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or

(d) Financial management which shall:

1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;

3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;

4. Be performed by an entity:

a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

b. With at least two (2) years of experience working with

individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;

5. Include preparing fiscal accounting and expenditure reports for:

- a. A consumer or consumer's representative; and
- b. The department.

(2) To be covered, a CDO service shall be specified in a plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting, except that respite may be provided in excess of the cap established in Section 12(2) of this administrative regulation if:

- (a) Necessary per the consumer's plan of care; and
- (b) Approved by the department in accordance with subsection (13) of this section.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

- (a) Be twenty-one (21) years of age or older;
- (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
- (c) Be appointed by the consumer on a MAP 2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The consumer fails to pay patient liability;

(c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or

(d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.

(11) A CDO provider shall:

(a) Be selected by the consumer;

(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the consumer, consumer representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the consumer;

(h) Submit to a criminal background check;

(i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) or (3);

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a consumer based on the consumer's plan of care.

(b) A consumer's twelve (12) month budget shall not exceed \$40,000 unless:

1. The consumer's support broker requests a budget adjustment to a level higher than \$40,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the consumer's health, safety, and welfare; and

4. If a significant change has occurred in the recipient's:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the recipient's relocation.

(d) A consumer's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the consumer's plan of care and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-CDO) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a CDO participant; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

(a) Be an overall limit applied to all services whether CDO services, Michelle P. waiver services not provided via CDO, or a combination of CDO and Michelle P. waiver services; and

(b) Shall equal \$63,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency.

(b) A class II incident which shall:

1. Be serious in nature;
2. Involve the use of physical or chemical restraints;
3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;
4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death.

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;

(c) The recipient's current crisis plan;

(d) Medication administration review forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received.

(4) All medication errors shall be reported to the department on a Michelle P. Waiver Medication Error Report by the 15th of the following month.

Section 11. Michelle P. Waiver Program Waiting List. (1)(a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:

1. In accordance with subsection (2) of this section; and

2. Which shall be maintained by the department.

(b) Each slot for the Michelle P. Waiver Program shall be contingent upon:

1. Biennium budget funding;

2. Federal financial participation; and

3. Centers for Medicare and Medicaid Services approval.

(2) For an individual to be placed on the Michelle P. Waiver Program waiting list, the:

(a) Individual shall submit to the department a completed Application for MPW Services; and

(b)1. Department shall place the individual on the waiting list if the department confirms that the MAP-621, Application for MPW Services, has been correctly completed.

2. If the department determines that a MAP-621, Application for MPW Services, has not been completed correctly, the department shall return the form to the applicant notifying the applicant of the incorrectness or missing information.

(3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that the application is received and validated by the department.

(4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:

(a) Applicant; or

(b) Applicant's legal representative.

(5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:

(a) Verify the accuracy of the individual's information; and

(b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.

(6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a) After a documented attempt, the department is unable to contact or locate the individual or the individual's legal representative;

(b) The individual is deceased; or

(c) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

(a) Lose his or her current position on the waiting list; and

(b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and

(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

(10) An individual who is:

(a) At least twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify; or

(b) Under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall be informed about:

1. And told how to apply for Medicaid state plan services for which the individual might qualify; and

2. Early and Periodic Screening, Diagnostic, and Treatment services.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic

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signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
- (c) Provide the department with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature immediately upon request.

Section 13.[12-] Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

- (a) Homemaker;
 - (b) Personal care;
 - (c) Attendant care;
 - (d) Supported employment;
 - (e) Adult day health care;
 - (f) Adult day training;
 - (g) Community living supports;
 - (h) Physical therapy;
 - (i) Occupational therapy;
 - (j) Speech therapy; and
 - (k) Behavior supports.
- (2) Respite services shall not exceed \$4,000 per member, per calendar year.
- (3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.
- (4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.
- (b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Payment Limit	Upper Rate	Unit of Service
Case Management	\$50.00		15 minutes
Respite	\$4,000	per calendar year	15 minutes
Homemaker	\$6.50		15 minutes
Personal Care	\$7.50		15 minutes
Attendant Care	\$2.90		15 minutes
Supported Employment	\$5.54		15 minutes
Adult Day Health Care	\$2.75		15 minutes
Adult Day Training	\$2.75		15 minutes
Community Living Supports	\$5.54		15 minutes
Physical Therapy	\$22.17		15 minutes
Occupational Therapy	\$22.17		15 minutes
Speech Therapy	\$22.17		15 minutes
Behavior Supports	\$33.25		15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year		
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)		15 minutes
Support Broker	\$265.00		One (1) month

Section 14. Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 15.[13-] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section 16.[14-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Person Centered Planning: Guiding Principles", March 2005[~~edition~~];
- (b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", **August 2008**[~~February 2001~~][~~edition~~];
- (c)[(f)] "MAP-95 Request for Equipment Form", June 2007[~~edition~~];
- (d)[(g)] "MAP 109, Plan of Care/Prior Authorization for Waiver Services", **July 2008**[~~March 2007~~][~~edition~~];
- (e)[(h)] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", **July 2008**[~~January 2000~~][~~edition~~];
- (f)[(i)] "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", **July 2008**[~~March 2007~~][~~edition~~];
- (g)[(j)] "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", **July 2008**[~~March 2007~~][~~edition~~];
- (h)[(k)] "MAP-10, Waiver Services", **August 2014**[~~March 2007~~][~~edition~~];
- (i)[(l)] "The Kentucky Consumer Directed Option Employee Provider Contract", **August 2010**[~~May 4, 2007~~][~~edition~~];
- (j)[(m)] "**Michelle P. Waiver** Incident Report Form", **May 2013**[~~April 2, 2007~~][~~edition~~]; and
- (k)[(n)] "**Michelle P. Waiver Medication Error Report**", **November 19, 2008**; and
- (l) "MAP-621, Michelle P. Waiver Application Form", January 2014[~~edition~~].

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

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF IID) to reside in and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the number of Michelle P. Waiver Program participants shall not exceed the limited established by the Centers for Medicare and Medicaid Services (CMS); creates a waiting list for individuals applying to receive Michelle P. Waiver Program services along with provisions and requirements regarding the waiting list.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that DMS receives federal funding associated with the expenditures for every individual who receives Michelle P. Waiver Program services and to ensure DMS compliance with the requirements established for the program by the federal agency (CMS) which provides funding for and authorizes the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that this Medicaid waiver program is approved by the federal government and funded with federal funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that this Medicaid waiver program is approved by the federal government and funded with federal funds.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 284 providers participating in the Michelle P. Waiver Program and over 9,500 individuals receiving services via the program. DMS estimates that the number of individuals who could currently qualify to be placed on the program's waiting list could be 283.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals (or legal representatives of individuals) who wish to be placed on the Michelle P. Waiver Program waiting list will need to complete an application form and submit it to DMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals who wish to receive Michelle P. Waiver Program services will benefit from the presence of a waiting list which designates the individual's specific place on the list rather than having to apply and continually reapply with no guarantee of having a spot in line.

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

(a) Initially: The amendment is not expected to increase Medicaid Program costs. The 2013 calendar year costs for the Michelle P. Waiver program was \$213, 632, 087 (federal and state funds combined.)

(b) On a continuing basis: The amendment is not expected to increase Medicaid Program 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: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund 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. Neither an increase in fees nor funding is necessary to implement the

amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies equally to all regulated entities/individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not anticipated to generate a higher level of revenues for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response in (a) above also applies here.

(c) How much will it cost to administer this program for the first year? The amendment is not expected to increase Medicaid program costs.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amended After Comments)

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

RELATES TO: KRS 13B.010-13B.170, 194A.700(1), (7), 205.010(6), 205.201, 205.203, 205.455-465, 209.030(2), (3), 42 U.S.C. Chapter 35

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. Chapter 35 authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. Chapter 35 in Kentucky and promulgate administrative regulations for this purpose. This administrative regulation **establishes[sets forth]** the standards of operation for a homecare program for elderly persons in Kentucky.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) ~~[division—which]~~ Releases funds under contract for the delivery of services within the planning and service area.

(3) "Assessment" means the collection and evaluation of

information about a person's situation and functioning to determine the applicant's or recipient's service level and development of a plan of care utilizing a holistic, person centered approach by a qualified independent care coordinator (ICC).

(4) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based[homecare] services as identified in the Plan of Care[a "DAS-891, Plan of Care"] by:

- (a) Planning;
- (b) Referring;
- (c) Monitoring;[and]
- (d) Advocating; and
- (e) Following the timeline of the assessment agency to obtain:
 1. Service level; and
 2. Development of the Plan of Care.

(5) "Case management supervisor" means an individual meeting the requirements of Section 5(1)(a) and (b) of this administrative regulation and who shall have four (4) years or more experience as a case manager.

(6)~~[(5)]~~ "Case manager" means the individual employee responsible for:

- (a) Coordinating services and supports from all agencies involved in providing services required by the Plan of Care;
- (b) Ensuring all service providers have a working knowledge of the Plan of Care; and
- (c) Ensuring services are delivered as required.

(7) "Department" means the Department for Aging and Independent Living.

~~(8)[an individual who meets the requirements of Section 5(4) and (2) of this administrative regulation.~~

~~(6)] "District" is defined by KRS 205.455(4).~~

(9) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

- 1. Practicum placement;
- 2. Clinicals; or
- 3. Volunteerism.

(10) "Extraordinary out of pocket expenses" means medical expenses not covered by insurance including:

- (a) Copays;
- (b) Deductibles;
- (c) Prescriptions;
- (d) Premiums for medical insurance; or
- (e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures.

~~(11)~~[(7)]~~ "Formal support system" means paid services provided to an individual from any funding source.~~

~~(12)~~[(8)]~~ "Homecare services" means services that:~~

~~(a) Are:~~

- 1. Provided to an eligible individual who is functionally impaired as defined by KRS 205.455(7); and
- 2. Directed to the individual specified in subparagraph 1 of this paragraph toward:

a. Prevention of unnecessary institutionalization; and

b. Maintenance in the least restrictive environment, excluding residential facilities; and

(b) Include:

- 1. Chore services as defined by KRS 205.455(1);
- 2. Core services as defined by KRS 205.455(2);
- 3. Escort services as defined by KRS 205.455(5);
- 4. Home-delivered meals as defined by KRS 205.455(8);
- 5. Home-health aide services as defined by KRS 205.455(9);
- 6. Homemaker services as defined by KRS 205.455(10);
- 7. Home repair services as defined by KRS 205.455(11);
- 8. Personal care services as established in subsection ~~(16)~~~~[(14)]~~ of this section;
- 9. Respite services as defined by KRS 205.455(12);

~~(12)~~[(13)]~~ "Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and annual reassessment.~~

~~(13)~~[(14)]~~ (9)] "Informal support system" means any care provided to an individual which is not provided as part of a public or~~

private formal service program;

~~(14)~~[(15)]~~ [(40)] "Instrumental activities of daily living" as defined by KRS 194A.700(7).~~

~~(15)~~[(16)]~~ "Natural Supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.~~

~~(16)~~[(17)]~~ [(41)] "Personal care services" means assistance with activities of daily living.~~

~~(17)~~[(18)]~~ [(42)] "Reassessment" means reevaluation of the situation and functioning of a client.~~

~~(18)~~[(19)]~~ "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.~~

~~(19)~~[(20)]~~ "Social service assistant" means an individual who:~~

- ~~(a) Has at least a high school diploma or equivalent;~~
- ~~(b) Works under the direction of the case manager supervisor;~~
- ~~(c) Assists the case manager with record keeping, filing, data entry, and phone calls;~~

~~(d) Helps determine what type of assistance their clients need;~~

~~(e) Assists the client in getting services to carry out the plan of care;~~

~~(f) Coordinates services provided to the client;~~

~~(g) Assists clients in applying for other services or benefits for which they may qualify; and~~

~~(h) Monitors clients to ensure services are provided appropriately.~~

Section 2. Service Provider Responsibilities. A service provider contracting with a district to provide homecare services supported in whole or in part from funds received from the cabinet shall:

(1) Assure the provision of homecare services throughout the geographic area covered under its plan or proposal;

(2) Review the provision of homecare services to assure safety and consistency;

(3) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of homecare services;

(4) Permit staff of the cabinet and the district to monitor and evaluate homecare services provided;

(5) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the ~~department~~~~[Division of Aging Services]~~;

(6) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(7) Develop and maintain written personnel policies and a wage scale for each job classification; and

(8) Designate a supervisor to assure that staff providing homecare services are provided supervision.

Section 3. Homecare Plan. For program approval, a district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access for the ~~department~~~~[Division of Aging Services]~~ to records of the district pertaining to its contract for delivery of homecare services; and

(2) A plan for the delivery of homecare services in the area to be served by the district containing:

(a) Identification of services currently provided in the district; and

(b) The following assurances:

1. A justification of a decision not to fund a homecare service, including an assurance of adequate availability from another funding source;

2. A policy and procedure for assuring a client's:

a. Eligibility in accordance with Section ~~4~~~~[5(4)]~~ of this administrative regulation; and

b. Implementation of case management;

3. A policy and procedure for a client's referral for service to other appropriate programs and services as specified in paragraph (a) of this subsection;

4. A policy and procedure for volunteer programs to be utilized;

5. Identification of a service provider for each specific service;

6. A policy and procedure for the periodic monitoring of a client

for the appropriateness of homecare services and to assure safety and consistency;

7. A number of proposed clients for homecare services to be provided directly or by contract;

8. A unit cost per service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 8(2) of this administrative regulation;

9. A policy and procedure for the acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

10. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3);

11. A policy and procedure for the manner in which delivery of homecare services shall be provided to an eligible individual;

12. A policy and procedure for monitoring a subcontract for delivery of direct homecare services; and

13. A policy and procedure assuring that an assessment, as specified in Section 5(3) of this administrative regulation, shall include the following information submitted electronically to the ~~department~~[division] in the formats prescribed by the Aging Services Tracking System:

a. Demographic information, including family income;

b. Physical health;

c. Activities of daily living and instrumental activities of daily living;

d. Physical environment;

e. Mental and emotional status;

~~f. Assistive devices, sensory impairment, and communication abilities;~~

~~g. Formal and informal resources; and~~

~~h. Summary and judgment.~~

Section 4. Eligibility. (1) A prospective client for homecare services shall:

(a) Demonstrate that the prospective client is a person sixty (60) years of age or older; and

(b) Not be eligible for the same or similar services through Medicaid unless the individual is:

1. Considered inappropriate for person directed services due to:

a. An inability to manage his own services; and

b. A lack of availability of a person to act as his representative;

or

2. Unable to access the Home and Community Based Waiver through a traditional provider; and

(c) Meet one (1) of the following criteria:

1. Be functionally impaired in the performance of:

a. Two (2) activities of daily living;

b. Three (3) instrumental activities of daily living; or

c. A combination of one (1) activity of daily living and two (2) instrumental activities of daily living; ~~or~~

2. Have a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care; or

3. Be:

a. Currently residing in:

(i) A skilled nursing facility;

(ii) An intermediate care facility; or

(iii) A personal care facility; and

b. Able to be maintained at home if appropriate living arrangements and support systems are established.

(2) Eligibility shall be determined by an ICC[a case manager]:

(a) Qualified in accordance with Section 5(1) and (2) of this administrative regulation; and

(b) In accordance with Section 5(3)(4) of this administrative regulation.

(3) If a client meets eligibility requirements of subsection (1) of this section for homecare services, the client or caregiver shall be informed that the client shall be eligible for services as long as he or she meets eligibility requirements.

(4) An ICC[The case manager] shall determine a prospective client's eligibility for:

(a) The following services in accordance with 910 KAR 1:160:

1. Adult day services;

2. Adult day health services; ~~or~~

3. Alzheimer's respite care services; ~~or~~

4. In-home services; ~~or~~

5. Respite for the unpaid primary caregiver; and

(b) Service level of case management as determined on the DAIL-HC-01, Scoring Service Level.

(5)(a) The homecare program shall not supplant or replace services provided by the client's natural[informal] support system.

(b) If needs are being met by the natural[informal] support system, the client shall be deemed ineligible.

(c) An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

(6) Applicants who are eligible for services and funding is not available shall be placed on a waiting list for services.

Section 5. Case Management Requirements. (1) A case manager and an ICC shall:

(a) Meet one (1) of the following qualifications:

1. Possess a Bachelor's degree in a health or human services profession from an accredited college or university with:

a. One (1) year experience in health or human services;

or

b. The educational or experiential equivalent in the field of aging or physical disabilities;

2. Be a currently licensed RN as defined in KRS 314.011(5)(10) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities;

3. Be a currently licensed LPN as defined in KRS 314.011(9)(10) who has:

a. At least three (3) years of experience in the field of aging or physical disabilities; and

b. An RN to consult and collaborate with regarding changes to the Plan of Care; or

4. Have a Master's degree from an accredited college or university which serves as a substitute for the required experience required by subparagraph 1. through 3. of this paragraph;

(b) Be a department certified case manager beginning July 1, 2015; and

(c) Be supervised by a case management supervisor (a) A minimum of a bachelor's degree in one (1) of the following, no experience required:

1. Social work;

2. Gerontology;

3. Psychology;

4. Sociology; or

5. A field relevant to geriatrics;

(b) A minimum of a bachelor's degree in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree in a field not relevant to geriatrics or listed in Section 1(4) of this administrative regulation with two (2) years experience in working with the elderly;

(d) A Kentucky registered nurse with a current Kentucky license and two (2) years experience in working with the elderly; or

(e) A Licensed practical nurse with a current Kentucky license and three (3) years experience in working with the elderly.

(2)(a) In addition to meeting the requirements of subsection (1) of this section,

case management training shall be required as follows:

1. Fourteen (14) hours of initial training within six (6) months of hire; and

2. Sixteen (16) hours of in-service training annually.

(b) Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(2)(3) Each client shall be assigned a:

(a) Case manager; or

(b) Social service assistant.

(3)(4) (a) A client shall be assessed initially and reassessed at least annually[every six (6) months] thereafter by an ICC[ICCA][a case manager].

(b) After each assessment or reassessment, the ICC shall determine eligibility and service level of each assessed individual[case manager shall complete the DAS-888, Homecare

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Certification of Eligibility].

(c) If the client is ineligible, the case shall be closed with the reason documented in the case record and notification shall be mailed to the client or caregiver.

(4)[(5)] The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

1. Any funding source; or

2. A volunteer;

(b)1. Make a reasonable effort to secure and utilize informal supports for each client; and

2. Document the reasonable effort in the client's case record;

[and]

(c) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:

1. Level 1, a home visit shall be conducted every other month;

2. Level 2, a home visit shall be conducted every four (4) months; and

3. Level 3, a home visit shall be conducted every six (6) months[monthly including one (1):

1. Home visit with face-to-face contact at least every other month; or

2. Phone contact during any month a home visit does not occur]; and

(d) Document in the case record each contact made with a client, as specified in paragraph (c) of this subsection, or on behalf of the client.

(5)(a) A district shall employ an ICC to assess the eligibility and needs for each client.

(b) Clients assessed at a Level 1 or a Level 2 shall be assigned a case manager.

(c) Clients assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs[(7)-(a) A district shall assure a minimum of one (1) full-time equivalent case manager for each 100 clients.

(b) If the case manager also provides assessment services, the case manager's caseload shall not exceed seventy-five (75) clients.

(c) Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement.

(d) Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with paragraphs (a) and (b) of this subsection].

(6)[(8)] A client shall receive homecare services in accordance with an individualized Plan of Care developed through person centered planning[cooperatively with the client's case manager]. The plan shall:

(a) Relate to an assessed problem;

(b) Identify a goal to be achieved;

(c) Identify a scope, duration and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager, with a copy provided to the client.

(7) Case management services shall not be provided to individuals on a waiting list.

Section 6. Quality Service. If a client is determined eligible for homecare services, the case manager shall:

(1) Read, or have read and explained to the client, the purpose of the DAIL-HC- 02["DAS-889], Quality Service Agreement["];

(2) Provide a copy of the completed agreement to the client which shall contain the name, address, and telephone number of:

(a) The current case manager or social service assistant;

(b) A designated representative of the district; and

(c) A representative of the department[Division of Aging Services];

(3) Ensure that a copy of a DAIL – HC- 03["DAS-890], Report of Complaint or Concern["] containing written complaints and detailed reports of telephoned or verbal complaints, concerns or

homecare service suggestions is maintained in the client's permanent file and documented in a centralized log; and

(4) Document investigation and efforts at resolution or service improvement that shall be available for monitoring by the district and department[Division of Aging Services] staff.

Section 7. Request for a Hearing. A client may request a hearing:

(1) As provided by KRS 13B.010-170; and

(2) Within thirty (30) days of any decision by the:

(a) Cabinet;

(b) District; or

(c) Service provider.

Section 8. Fees and Contributions. (1) The ICC[A case manager] shall be responsible for determining fee paying status, using the [following] criteria established in this subsection.[:]

(a) A fee shall not be assessed for the provision of assessment, case management services, or home-delivered meals.

(b) The ICC[case manager] shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d)1. SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130 percent the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services. Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract. The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0 – 129%	0%	0%	0%
130% - 149%	20%	0%	0%
150% - 169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual or[.] family with a zero percent copay[.] or other entity] shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Homecare services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

Section 9. Allocation Formula. The homecare program funding formula shall consist of a \$40,000[\$20,000] base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

Section 10. Termination or Reduction of Homecare Services.

(1)(a) A case manager or client may[shall decide to] terminate homecare services.

(b) Homecare services shall be[may be reduced or] terminated

if:

1. The program can no longer safely meet the client's needs;
2. The client does not pay the copay for services as established in Section 8(2) of this administrative regulation;
3. The client refuses to follow the plan of care; or
4. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with the corrective action plan.

(2) Homecare services may be reduced if:

- (a) The client's condition or support system improves;
 - (b) Program funding has been reduced; or
 - (c) The client refuses to follow the plan of care for a particular service.
- [The client's condition or support system improves; or
2. A determination is made that the "DAS-891, Plan of Care" cannot be followed].

(3)(2) If homecare services are terminated or reduced, the case manager shall:

- (a) Inform the client of the right to file a complaint;
- (b) Notify the client or caregiver of the action taken; and
- (c) Assist the client and family in making referrals to another agency if applicable.

(4)(3) If homecare services are terminated or reduced due to reasons unrelated to the client's needs or condition, the designated district representative in conjunction with the case manager[,] shall determine reduction or termination on a case-by-case basis.

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

- (a) "DAIL-HC 01, Scoring Service Level", 4/2014;
- (b) "DAIL-HC- 02, Quality Service Agreement", 4/2014; and
- (c) "DAIL-HC- 03, Report of Complaint or Concern", 4/2014["DAS-888, Homecare Certification of Eligibility, 8/05";
(b) "DAS-889, Quality Service Agreement, 8/05";
(c) "DAS-890, Report of Complaint or Concern, 8/05"; and
(d) "DAS-891, Plan of Care, 8/05"].

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

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Homecare program for the elderly.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the Area Agencies on Aging and Independent Living with the requirements of the home care program for the elderly including assessments, eligibility criteria, service provision and case management services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides for services to be provided within the home of an individual age 60 or older who have deficits in providing for their own Activities of Daily Living and Instrumental Activities of Daily Living and provides case management to ensure community resources are utilized to provide the needed and necessary services which will allow the individuals to remain in their own home for as long as possible and in compliance with the requirements of KRS 205.203 which authorizes the Secretary of the Cabinet for Health and Family Services to provide in-home services to the elderly and the collection of fees and KRS 205.455-465 which provides for essential services to the functionally impaired elderly to assist in preventing unnecessary institutionalization

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of operation for the homecare program for elderly persons in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides clarification by defining Case Manager and the qualifications of a case manager, defining extraordinary out of pocket expenses, the Independent Care Coordination Agency "ICCA", Natural Supports, and a Social Service Assistant. The amendment clarifies, individuals are not eligible for homecare services when they are eligible for the same or similar services through Medicaid unless they are unable to find a traditional provider through the HCB waiver or they are considered inappropriate for person directed services. This amendment allows for a Social Service Assistant to maintain contact with high functioning clients that are able to manage their own affairs and provides the qualifications for a Social Service Assistant. Clients in the Homecare program will be assessed by the "ICCA" for eligibility and level of need. The clients level of need will determine the level of case management to be assigned and the required contacts to be made by the case managers. The base funding for each district has increased from \$20,000 to \$40,000 with the remaining allocation distributed in proportion to the district's elderly sixty (60) plus population. The amendment also provides further clarification on the reduction or termination of services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide clarification in definitions and to establish a continuum of care within community based services that will utilize the state funded programs only after programs that draw down Federal match are accessed or the individual is determined ineligible. The amendment also establishes levels of case management so that individuals with the highest need are receiving the highest level of care and resources are not being spent where they are not needed. The change in the base allocation will allow the districts with a smaller population to have funding to provide at least one full time equivalent staff person and to meet the program requirements. The base funding has been unchanged since the inception of the homecare program over 30 years ago.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statute KRS 194A.050(1) and 205.204(2) by providing in-home services to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the elderly citizens of the Commonwealth. This administrative regulation provides home based services to allow individuals to remain in their own home longer and diverts individuals from unnecessary institutionalization.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes as it provides clarification on eligibility, case management service requirements, clarification of definitions and provides a base allocation to ensure statewide staffing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fifteen (15) Area Agencies on Aging and Independent Living agencies that provide case management and assessment services, 4,508 current individuals receiving services through the homecare program and an additional 5,793 on a waiting list for services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Agencies on Aging and Independent Living (AAAIL) will have to evaluate their case management staff to ensure they meet the qualifications to provide the services. Those that do not meet the case management requirements may be able to remain employed as a Social Service

Assistant if the AAAIL decides to employ this level of staffing. The AAAIL will be the assessment entity and will be required to employ sufficient, qualified staff to complete the assessments timely. Current clients that meet the eligibility for the same or similar services through Medicaid will be required to have services delivered through the federally funded program rather than the state funded homecare program. The client will be able to maintain their current case manager or chose to change to another provider. In addition the service delivery provider, if a Medicaid provider may continue to provide the direct services or the client may choose a new provider. Individuals that are moved under Medicaid funding whose current provider is not a Medicaid provider will be given a choice of new service provider under Medicaid or they may chose the Participant Directed Option and hire the current provider or qualified individual.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs to the providers is anticipated. They will have the opportunity to receive additional funds through providing services to more individuals. The leveling of case management will reduce the overall costs of the program by reducing travel and staff time. Face to face home visits will no longer be required monthly by the case manager unless they are assessed to meet the highest level of care. Also with the addition of a Social Service Assistant the cost of staffing will be reduced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More individuals that need services who traditionally end up on waiting lists will be served as those eligible for the same or similar service that is available through Medicaid will be moved to those services freeing up monies to serve those that don't qualify for the federal programs.

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

(a) Initially: FY 15 - Approximately \$16 million, which is the same funding as FY 14.

(b) On a continuing basis: FY 16 - Approximately \$16 million, it is anticipated that funding will remain consistent.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

counties, fire departments, or school districts) for subsequent years? The amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? FY 15- approximately sixteen (16) million dollars

(d) How much will it cost to administer this program for subsequent years? FY 16- approximately sixteen (16) million dollars

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are 15 Area Development Districts throughout the state and the Department for Aging and Independent Living affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.700 – 729, 216.595(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will not generate additional revenue or an increase in costs in expenditures.

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

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

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)**16 KAR 2:120. Emergency certification and out-of-field teaching.**

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030, 161.100, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. (1)(a) Until December 31, 2014, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form TC-4F.

(b) Beginning January 1, 2015, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form CA-4F.

(2) In accordance with KRS 161.100, prior to applying on behalf of an applicant for an emergency teaching certificate, the superintendent and board of education of a local school district shall document the following:
~~In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on Form TC-4F:~~

(a) Qualified teachers have not applied for the vacant position and qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position shall be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(3)(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.

1. The term of validity of an emergency certificate may be limited to a period less than the full school year.

2. The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.

3. In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the

Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.

(b) An emergency certificate shall not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:

1. The emergency certificate was issued after February 15 of a school year; or

2. The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

(c) If an emergency certificate is issued to a person pursuant to paragraph ~~(b)~~(e) of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.

(4)(3)(a) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

1. The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;

2.a. The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or

b. If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences; and

3. The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.

(b) The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.

(5)(4) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers.

(6)(5) The Education Professional Standards Board shall periodically review the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(7)(6)(a) 1. An emergency certificate for full-time or part-time employment shall be issued only to individuals who:

a. Have completed a minimum of a bachelor's degree from a regionally accredited college; and

b.(i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.

(b) An emergency certificate for substitute teaching shall be issued to individuals who:

1. Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and

2.a. Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

b. Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(8)(7)(a) 1. Until December 31, 2014, a Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

2. Beginning January 1, 2015, a Form CA-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b)1. Until December 31, 2014, a TC-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

2. Beginning January 1, 2015, a CA-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

(c) A local school district shall review the qualifications and transcripts for each applicant for an emergency certificate for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

1.a.(i) Until December 31, 2014, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.

(ii) Until December 31, 2014, [b.] a candidate for an emergency certificate for substitute teaching shall complete the Form TC-4 by using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.

b.(i) Beginning January 1, 2015, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.

(ii) Beginning January 1, 2015, a candidate for an emergency certificate for substitute teaching shall complete the Form CA-4 by using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.

2. A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE or Form CA-4VE.

3. A local school district shall submit any TC-4VE or Form CA-4VE application on which the candidate has provided an affirmative answer to any question in the application's Section IV, Character and Fitness, to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching

position.

Section 3. Rank and Salary Provisions. (1) The Education Professional Standards Board shall issue the emergency certificate for full-time or part-time employment established in Section 2 of this administrative regulation with a rank designation based upon the criteria established in this subsection.

(a) A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

(b)1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7:010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7:010 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher:

1. Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7:010; and

2. Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts issuing the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the rank classifications established in KRS 161.1211.

Section 4. Out-of-field Teaching. (1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;

2. The number of teachers who hold an expired certificate;

3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor, or area of concentration in the subject area they are teaching.

Section 5. Beginning January 1, 2015, an applicant for any certificate described in this administrative regulation 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. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Form CA-4", 08/2014;
- (b) "Form CA-4F", 08/2014;
- (c) "Form CA-4VE", 08/2014;
- (d) "Form TC-4", 10/2009;
- (e) "Form TC-4F", revised 10/2009;
- (f) Form TC-4VE", 10/2009;
- (g) "On-line Emergency Substitute Application Implementation Guide for Kentucky School Districts", August 2014; and
- (h) "On-line TC-4 Implementation Guide for Kentucky School Districts", May 2012; and
- (d) "Form TC-4", 10/2009.

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

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 14, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, September 26, 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 11:59 p.m. on September 30, 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 definition for out-of-field teaching and the qualifications and procedures for obtaining emergency certifications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform school districts of the appropriate certification for public school teaching positions in Kentucky and to make applicants aware of the qualifications and procedures for obtaining emergency certifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for emergency teaching certificates and establishes the procedures by which school districts may apply for emergency teaching certificates.

(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 Emergency

Certification, Emergency Vocational Certification, and Emergency Substitute Certification from using forms TC-4F, TC-4VE, and TC-4, respectively, to using forms CA-4F, CA-4VE, and CA-4, respectively. The CA-4F, CA-4VE, and CA-4 are updated and modernized application forms containing new character and fitness questions, which ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant's qualifications and fitness to work with students. Additionally, the amendment requires that an applicant for emergency certification 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.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant's qualifications and fitness to work with students.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant's qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking emergency certification, and students.

(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 to initiate the hiring of an applicant for emergency certification by using the appropriate application form. Applicants will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background check when applying for emergency certification. Students will not have to take any action 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): There should be no additional costs to any party since the background checks are required at employment and applications for emergency certification are initiated by the hiring school district.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts will have modernized forms that increase clarity and promote confidence in the Education Professional Standards Board decision regarding each applicant's qualifications and fitness to work with students. Applicants will have modernized forms that increase clarity. Students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant's qualifications and fitness to work with students.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for emergency certification 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 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 161.100 and KRS 161.122(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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, rather, establishes the definition of out-of-field teaching and the qualifications and procedures for obtaining emergency certifications.

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

31 KAR 4:130. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically~~Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens].~~

RELATES TO: KRS[146.045, 146.0452, 147.079,] 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130[42 U.S.C. 4973ff], 42 U.S.C. 1973ff-1

STATUTORY AUTHORITY: KRS[146.045(4)(e),] 117.079, 117.086(1), 117A.030(2), (4)-(6), 42 U.S.C.[1973ff,] 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration

applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130[KRS 117.079 requires the State Board of Elections to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. 42 U.S.C. 1973ff-1 provides that each state shall use the official post card form for simultaneous voter registration application and absentee ballot application. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one (1) means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, balloting, and election materials and information. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the

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~~qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the blank absentee ballot by facsimile].~~

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) ["Application" means the Federal Post Card Application, Standard Form 76. (2)] "Instructions to Voter" means the Instructions for Voting to a Covered Voter [Qualified Kentucky Resident] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot [Emailed an Absentee Ballot], SBE 46A (Rev. July 2014).

(4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5) [(3)] "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically. (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

(a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;

(b) Complete the county clerk's portion of the Instructions to Voter;

(c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and

(d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

(1) If the covered voter requires assistance in voting, the covered voter and the person who assisted the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";

(2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;

(3) The covered voter shall complete and sign the Voter Verification and Declaration;

(4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;

(5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;

(6) The covered voter shall sign across the back flap of the outer envelope;

(7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and

(8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received [Who May Request Federal Post Card Application by Facsimile. (1) Any resident of Kentucky may transmit a request for an application to the office of the county clerk of the county where the applicant resides via facsimile if the applicant meets one (1) of the following criteria:

(a) Is a member of the Armed Forces;

(b) Is a dependent of a member of the Armed Forces; or

(c) Is a citizen residing overseas.

(2) If the applicant desires to have the application faxed, the applicant shall indicate this and the appropriate facsimile number on the request.

Section 3. Requests for Applications.

(1) Upon receiving a request for an application by facsimile from or on behalf of a person who meets the requirements listed in Section 2(1), a county clerk shall complete the transmission sheet and the county clerk's portion of the application. The county clerk shall then do one (1) of the following:

(a) Transmit the transmission sheet and the application to the Federal Voting Assistance Program at one (1) of the numbers listed on the transmission sheet; or

(b) Transmit the transmission sheet and the application to the voter at the facsimile number provided by the voter on the absentee ballot application.

(2) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the application to the applicant via facsimile.

(3) If the applicant does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile.

(1) The county clerk shall accept any properly completed Federal Post Card Application by facsimile for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any person who fulfills the eligibility requirements listed in Section 2(1) of this administrative regulation.

(2) The county clerk shall accept a properly completed application for voter registration when consistent with the timelines established by KRS 116.0452.

(3) If an application for an absentee ballot is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application for an absentee ballot is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the application, in accordance with KRS 117.085(1)(b).

(4) The county clerk shall verify the applicant's eligibility. If the applicant is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original blank absentee ballot.

(5) The county clerk shall mark the original blank absentee ballot "Faxed to (Military or Overseas) Voter" and the ballot shall be retained. The original blank absentee ballot shall not be reused.

(6) The county clerk shall complete a transmission sheet, the county clerk's portion of the voter verification sheet, and the instructions to voter sheet. The faxable copy of the original blank absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet, and the

transmission sheet to one (1) of the Federal Voting Assistance Program facsimile numbers listed on the transmission sheet or directly to the facsimile number provided by the voter.

(7) If the county clerk has faxed the materials through the Federal Voting Assistance Program's facsimile numbers, the Federal Voting Assistance Program shall transmit the documents to the voter via facsimile.

(8) If the county clerk receives a faxed application that does not clearly indicate whether the ballot is to be transmitted by mail or by facsimile, the county clerk shall transmit the blank absentee ballot by U.S. mail.

Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile.

(1) When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet.

(2) If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall:

(a) Print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet;

(b) Seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope;

(c) Place the voter's signature across the back flap of the outer envelope;

(d) Print "Absentee Ballot" on the front of the outer envelope without obstructing the address area; and

(e) Mail the envelope to the address for the county clerk located on the voter instruction sheet.

(4) The absentee ballot shall be received by the county clerk through U.S. mail by the time established by the general election laws for the closing of the polls in accordance with KRS 117.086(1) in order to be counted.

Section 5[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Official Elections Material — Electronic Transmission Sheet";

(c) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(d) "Instructions for Voting to a Covered Voter[Qualified Kentucky Resident] Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot[Emailed an Absentee Ballot]", SBE 46A, rev. July 2014;

(b) "Voter Assistance Form", SBE 31, 02/06; and

(c) [June 2010; and (e)] "Voter Verification and Declaration[Sheet]", SBE 46B, rev. July 2014[June 2010].

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2014, at 9:00 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 available 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 end of the calendar day, September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via

facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement 42 U.S.C. 1973ff-1(a-f) and KRS 117A.030(4)-(6), and 117A.130 .

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation conforms to the content of the authorizing statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, establishing the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporating by reference

standardized absentee-voting materials and a declaration to be used by covered voters, and implementing the electronic free-access system pursuant to KRS 117A.130.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.100. KRS 117.086(1) authorizes the State Board of Elections to promulgate security requirements for the transmission of voted absentee ballots. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the Secretary of State to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the Secretary of State to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the Secretary of State to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.080(2) permits a covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission to choose facsimile transmission or the electronic transmission system established under KRS 117A.030(4). KRS 117A.120 requires that a military-overseas ballot include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or the Commonwealth of Kentucky. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations implementing KRS Chapter 117A, including establishing and implementing the electronic transmission system established by KRS 117A.030(4), developing standardized absentee-voting materials to be used with military-overseas ballots pursuant to KRS 117A.030(5), prescribing the form of a declaration for use by a covered voter pursuant to KRS 117A.030(6), and establishing an electronic free-access system pursuant to KRS 117A.130. This administrative regulation assists in the effective administration of the statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010 and establishing the procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporating by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implementing the electronic free-access system pursuant to KRS 117A.130.

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

(a) How the amendment will change the existing administrative

regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified or vitiated by statute and establishing procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically that are consistent with KRS Chapter 117A. The materials incorporated by reference have been amended to reflect the changes to procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically and to implement the declaration to be used by covered voters pursuant to KRS 117A.030(6).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to amendments to existing statutes and newly enacted statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute, establishing procedures for the county clerk to follow and materials for the county clerk to use when transmitting a military-overseas ballot via facsimile or electronically that are consistent with KRS Chapter 117A, and establishing procedures for a covered voter to follow and materials for a covered voter to use, including the declaration required by KRS 117A.030(6), when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically that are consistent with KRS Chapter 117A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures for the county clerk to follow when transmitting a military-overseas ballot via facsimile or electronically that are consistent with KRS Chapter 117A and a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically and by incorporating by reference standardized absentee-voting materials and a declaration to be used by covered voters.

(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 county clerks and an unknown number of covered voters.

(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: County clerks will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for transmitting military-overseas ballots via facsimile or electronically. Covered voters are not required to take any action to comply with this amended administrative regulation but will have the opportunity to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, covered voters will have the opportunity to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted. County clerks have an interest in ensuring that all eligible Kentuckians are able to exercise their rights to register to vote and vote in all elections, and compliance with this administrative regulation furthers that interest by enabling covered voters to have military-overseas ballots transmitted to them via facsimile or electronically and have their military-overseas ballots counted.

(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 Board of Elections' budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 117A.020, 117A.030, 117A.070, 117A.080, 117A.120

(3) Minimum or uniform standards contained in federal mandate: 42 U.S.C. 1973ff-1(a)(4) requires states to use the official post card form prescribed under 42 U.S.C. 1973ff for simultaneous voter registration application and absentee ballot application. 42 U.S.C. 1973ff-1(a)(5) requires states that require an oath or affirmation to accompany any document under that subchapter to use the standard oath prescribed under 42 U.S.C. 1973ff(b)(7). 42 U.S.C. 1973ff-1(a)(7) requires states to, in addition to any other method for transmitting blank absentee ballots in the state, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary and runoff elections for Federal office. 42 U.S.C. 1973ff-1(e) requires states to designate not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate. However, the state compliance standards do impose additional requirements to the federal mandate. Pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters. Pursuant to KRS 117A.080, more voters than required by the federal mandate may use the federally mandated procedures.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation will impact county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.079, 117.086(1), and 117A.030(2), (4)-(6), and 42 U.S.C. 1973ff-1.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments to administer this program for the subsequent years.

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

Revenues(+/-):

Expenditures(+/-):

Other Explanation (+/-):

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

31 KAR 4:140. Submission of the federal postcard application via electronic mail[~~Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens.~~]

RELATES TO: KRS 116.045(4)(e)[116.995], 117.079, 117.085, 117A.050(3), 117A.060(3), 42 U.S.C. 1973ff-1[117.995, 119.265, 369.107, 42 U.S.C. 1973]

STATUTORY AUTHORITY: KRS 116.045(4)(e), [117.045(1)(a)], 117.079, 117.086(1), 42 U.S.C. 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when

a federal postcard application is submitted via electronic mail[KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Military and Overseas Voter Empowerment Act of 2009, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1(a-f), requires the states to provide not less than one means of electronic communication by which military and overseas voters may use to register to vote, send voter registration applications and absentee ballot applications, and for providing and receiving related voting, blank balloting, and election materials and information. 42 U.S.C. 1973ff-1(h) requires each state to develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot has been received by the county clerk. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the State Board of Elections to promulgate absentee ballot security requirements. This administrative regulation establishes procedures for the county clerk and the qualified voter to follow when transmitting and receiving the Federal Post Card Application and transmitting the absentee ballot electronically].

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5)["Absentee ballot application" means the Federal Post Card Application, Standard Form 76, electronically sent to the county clerk.

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA and MOVE.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Emailed an Absentee Ballot," SBE 46A.

(4) "MOVE" means the Military and Overseas Citizen Empowerment Act, Pub.L. 111-84, codified at 42 U.S.C. 1973ff-1.

(5) "Registered voter" means a resident of Kentucky who is eligible to vote and is a:

- (a) Military personnel;
- (b) Dependent of a member of the Military; or
- (c) Other resident of Kentucky residing outside the United States.

(6) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet.

(7) "UOCAVA" means the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

(8) "Voter verification sheet" means the SBE 46B, the form the registered voter signs and includes the voter assistance oath].

Section 2. County Clerk's Electronic Mailing Address.[(1) A county clerk that has online capabilities shall follow the process established by this administrative regulation in administering UOCAVA and MOVE for the electronic transmission of Federal Post Card Applications, absentee ballot requests, and blank absentee ballots.

(2) The county clerk shall use the county clerk's electronic mailing address provided or recognized by the Kentucky Department of Transportation to send to and receive from covered voters voter registration applications, military-overseas ballot applications, military-overseas ballots, and related voting, balloting, and election information][receive a voter's Federal Post Card Application, to send a blank absentee ballot, and to send election related materials.

(3) The county clerk shall accept any properly completed Federal Post Card Application received electronically for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any registered voter

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as defined by this administrative regulation].

Section 3. Federal Postcard Applications Submitted Via Electronic Mail. (1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

(2) The county clerk shall treat a federal postcard application submitted by a covered voter via electronic mail in the same manner as a federal postcard application submitted via the electronic transmission system established under KRS 117A.030(4)[Processing a Completed Application electronically.

(1) If the county clerk receives notification of a voter's absentee ballot application electronically less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If the county clerk receives notification of a voter's completed absentee ballot application electronically not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare a PDF copy of the original blank absentee ballot. The original blank absentee ballot shall then be marked "Emailed to (Military or Overseas) Voter" and retained.

(4) The original blank absentee ballot shall not be reused. The electronic copy of the original blank absentee ballot shall be sent electronically to the voter, along with the transmission sheet, instructions to voter sheet, and the voter verification sheet, to either the FVAP Electronic Transmission Service at the email address listed on the transmission sheet or directly to the voter at the email address provided on the voter's absentee ballot application.

Section 4. Voter's Instructions on Completing an Absentee Ballot Received Electronically.

(1) When a voter receives an absentee ballot electronically from the county clerk, the voter shall print the absentee ballot, mark the absentee ballot, and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print the voter's name, voting address, and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope without obstructing the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day, to the county clerk through the mail in order to be counted.

Section 5. Military and Overseas Voter Free Access System.

(1) The voter may determine the date the county clerk delivered the blank absentee ballot to the voter and the date the voter's voted ballot was received by the county clerk by utilizing the Absentee Ballot Status Inquiry System on the State Board of Elections' Web site, <http://www.elect.ky.gov/>.

(2) The county clerk shall participate in the free access system developed by the State Board of Elections or create a similar system on the local level by which the requirements of 42 U.S.C. 1973ff-1(h) are fulfilled.

Section 6. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Instructions for Faxing or Emailing an Absentee Ballot to a Qualified Kentucky Resident", SBE 46, June 2010;

(b) "Federal Post Card Application", Standard Form 76A (Rev. 10-2005);

(c) "Official Elections Material — Electronic Transmission Sheet";

(d) "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot", SBE 46A, June 2010; and

(e) "Voter Verification Sheet", SBE 46B, June 2010.

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2014, at 9:00 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 available 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 end of the calendar day, September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation authorizes covered voters to submit a federal postcard application via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement 42 U.S.C. 1973ff-1(a-f) and KRS 116.045(4)(e).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation conforms to the content of the authorizing statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a-f) requires the states to provide not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117A.050(3) provides that a covered voter may use the electronic transmission system or any other approved method to register to vote. KRS 117A.060(3) provides that a covered voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot. This administrative regulation assists in the effective administration of the statutes by preserving the absentee voting rights of Kentucky residents who are covered voters under KRS 117A.010, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified, vitiated by statute, or included in other administrative regulations; establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations; and deleting material incorporated by reference that has been defined by statute or incorporated into other administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to amendments to existing statutes and administrative regulations and newly enacted statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute or included in other administrative regulations, authorizing covered voters to submit a federal postcard application via electronic mail, and establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail that are consistent with KRS Chapter 117A and related administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect county clerks and covered voters.

(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: County clerks will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for receiving and processing federal postcard applications submitted by covered voters via electronic mail. Covered voters are not required to take any action to comply with this amended administrative regulation.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): County clerks have an interest in ensuring that all eligible Kentuckians are able to exercise their right to register to vote and to vote in all elections, and compliance with this administrative regulation furthers that interest by establishing the procedures for county clerks to follow when a federal postcard application is submitted via electronic mail.

(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 Board of Elections' budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 116.045(4)(e), 117A.050(3), 117A.060(3)

(3) Minimum or uniform standards contained in federal mandate: 42 U.S.C. 1973ff-1(a)(4) requires states to use the official post card form prescribed under 42 U.S.C. 1973ff for simultaneous voter registration application and absentee ballot application. 42 U.S.C. 1973ff-1(a)(7) requires states to, in addition to any other method for transmitting blank absentee ballots in the state, establish procedures for transmitting by mail and

electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary and runoff elections for Federal office. 42 U.S.C. 1973ff-1(e) requires states to designate not less than one means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications, for use by the State to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate. However, the state compliance standards do impose additional requirements to the federal mandate. Pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters. Pursuant to KRS 117A.050(3) and 117A.060(3), the federally mandated procedures are available to more voters than required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 116.045(4)(3), and 117.079, 117.086(1) and 42 U.S.C. 1973ff-1.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments to administer this program for the subsequent years.

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

Revenues(+/-):

Expenditures(+/-):

Other Explanation (+/-):

KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

31 KAR 5:010. Use of the federal write-in absentee ballot[in elections for federal office].

RELATES TO: KRS 117.079, 117A.050(2), 117A.060(3), 117A.100, 117A.130, 117A.160(1), 42 U.S.C. 1973ff-1[117.085, 42 U.S.C. 1973ff-2, 42 U.S.C. 1973ff-6]

STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), 42 U.S.C. 1973ff-1[42 U.S.C. 1973ff-2]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130[KRS 117.079 requires the State Board of Elections to promulgate administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. This administrative regulation establishes the requirements and procedures for absentee voting in a runoff primary election for residents of Kentucky residing outside of the United States and Kentucky residents who are military personnel serving on active duty outside of the United States to cast a ballot by use of the Federal Write-in Absentee Ballot].

Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

(2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. Definition of a Vote for Federal Write-in Absentee Ballots. The requirements of 31 KAR 6:030, Section 5(2)(a) and Section 6(1), (2), and (9), shall be suspended for the purposes of this administrative regulation.

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Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal write-in absentee ballot, the county clerk shall:

- (1) Not open the inner security envelope;
- (2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;
- (3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;
- (4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and
- (5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(6).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot.

- (1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(6) and not be opened until after the deadline for receipt of the state absentee ballot.
- (2) If the county clerk receives no later than the deadline for receipt of the state absentee ballot a valid and voted state absentee ballot from a covered voter from whom the county clerk also receives a federal write-in absentee ballot, the county clerk shall not unseal the inner security envelope containing the federal write-in absentee ballot and shall write on the inner security envelope containing the federal write-in absentee ballot, "Cancelled because state absentee ballot received."

Section 5. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received["Absent voter" means a resident of Kentucky who is eligible and registered to vote and is an:

- (a) "Absent uniformed services voter" as defined by 42 U.S.C. 1973ff-6(1); or
- (b) "Overseas voter" as defined by 42 U.S.C. 1973ff-6(5).
- (2) "FWAB" means the Federal Write-in Absentee Ballot developed by the Federal Voting Assistance Program.

Section 2. Any absent voter may cast a ballot by use of the FWAB in any primary, regular, or special election for federal office as long as the voter has made or attempts to make timely application for, and does not receive the state absentee ballot in time to cast a ballot for the election. Any county board of elections that receives a voted FWAB shall assume that the absent voter has made or attempted to make timely application for a state absentee ballot.

Section 3. When to count the FWAB.

- (1) A FWAB received by the county board of elections from an absent uniformed services voter shall not be counted if the FWAB is submitted from within the voter's county of residence.
- (2) A FWAB received by the county board of elections from an overseas voter shall not be counted if the ballot is submitted from any location in the United States.

Section 4. Completing the FWAB. (1) In completing the FWAB:

- (a) The absent voter may designate a candidate in the following ways:
 1. In a primary, by writing in the name of the candidate; or
 2. In a general election, by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party.
- (b) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a

political party shall be counted as a vote for the electors supporting the candidate named.

(c) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained.

(d) The requirements of 31 KAR 6:030 shall be suspended for the purposes of this administrative regulation.

(2) The Federal Write-In Absentee Ballot shall not be used for purposes of voter registration or to request an absentee ballot.

Section 5. Receipt Of State Ballot Overrides FWAB. (1) An absent voter who submits a FWAB and subsequently receives a state absentee ballot may submit the state absentee ballot.

(2) The county board of elections shall not unseal or count the FWAB if the county clerk receives a valid and voted state ballot by 6:00 p.m., prevailing time, on election day.

(3) The county clerk shall mark on the outer envelope of the sealed FWAB the words, Cancelled because state ballot received.

Section 6. Prohibiting Refusal To Accept Ballot For Failure To Meet Certain Requirements. A county board of elections shall not refuse to accept and process any otherwise valid FWAB submitted in any manner by an absent voter solely on the basis of the following:

- (1) Notarization requirements;
- (2) Restrictions on paper type, including weight and size; and
- (3) Restrictions on envelope type, including weight and size.

Section 7. Incorporation by Reference. (1) "Federal Write-In Absentee Ballot", Standard Form 186A, October 2005 edition, is incorporated by reference.

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

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2014, at 9:00 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 available 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 end of the calendar day, September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for

Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010 and to implement KRS 117A.050(2), 117A.060(4), 117A.100, 117A.130, 117A.160, and 42 U.S.C. 1973ff-1(a)(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of

Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.079 requires the State Board of Elections to, as circumstances warrant and with the concurrence of the Attorney General, promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for Federal office. KRS 117A.050(2) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of a federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. KRS 117A.060(4) provides that a covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. KRS 117A.100 provides that a covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in KRS 117A.020. KRS 117A.130 requires the Secretary of State, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.160(1) establishes the criteria for accepting as a valid vote a write-in ballot authorized under KRS Chapter 117A. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility for promulgating administrative regulations covering the use of the federal write-in absentee ballot and establishing an electronic-free access system pursuant to KRS 117A.130. This administrative regulation assists in the effective administration of the statutes by establishing the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implementing the electronic free-access system pursuant to KRS 117A.130.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the existing administrative regulation by removing provisions that have been codified or vitiated by statute and conforming to KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment also changes the existing administrative regulation by deleting the material incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the existing administrative regulation is inconsistent with KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 and to establish procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment is also necessary to delete the material

incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by removing provisions that have been codified or vitiated by statute and conforming to KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by making the administrative regulation consistent with KRS 117A.050(2), 117A.060(4), 117A.100, and 117A.160 by establishing procedures for county clerks to follow when a covered voter uses the declaration accompanying the federal write-in absentee ballot to apply to register to vote, apply for a military-overseas ballot, or use a federal write-in absentee ballot to vote in elections under KRS 117A.020. The amendment will also assist in the effective administration of the statutes by deleting the material incorporated by reference, which has been amended by the promulgating federal agency and is now defined by statute.

(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 county clerks, county boards of elections, and an unknown number of covered voters.

(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: County clerks and county boards of elections will need to familiarize themselves with and follow the procedures set forth in this amended administrative regulation for processing federal write-in absentee ballots. Covered voters are not required to take any action to comply with this amended administrative regulation but will have the opportunity to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot and to use a federal write-in absentee ballot to vote in elections under KRS 117A.020.

(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 comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, covered voters will have the opportunity to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot and to use the federal write-in absentee ballot to vote in elections under KRS 117A.020. County clerks and county boards of elections have an interest in ensuring that all eligible Kentuckians are able to exercise their right to register to vote and to vote in all elections, and compliance with this administrative regulation furthers that interest by enabling covered voters to use the declaration accompanying a federal write-in absentee ballot to apply to register to vote and apply for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot.

(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 Board of Elections' budget.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will 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, either directly or indirectly, any increased fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1.

(2) State compliance standards: KRS 117A.050(2), 117A.060(4), 117A.100, 117A.160.

(3) Minimum or uniform standards contained in federal mandate: 42 U.S.C. 1973ff-1(a)(3) requires states to permit absent uniformed services voters and overseas voters to use federal write-in absentee ballots in general elections for federal office.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate by permitting. However, the state compliance standards do impose additional requirements to the federal mandate by permitting covered voters to use the federal write-in absentee ballot for more purposes than required by the federal mandate. Pursuant to KRS 117A.050(2), more voters than required by the federal mandate may use the declaration accompanying a federal write-in absentee ballot to register to vote simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received during the period registration is open under KRS 116.045. Pursuant to KRS 117A.060(4), more voters than required by the federal mandate may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the close of business hours seven (7) days before the election. And pursuant to KRS 117A.020, the federally mandated procedures are available with respect to more elections than required by the federal mandate, including primary, regular, or special elections for federal office and primary, regular, or special elections for statewide or state legislative office, county or local government office, judicial office, Commonwealth's attorney, property valuation administrator, school board members, and circuit clerk or concerning a state or local ballot measure for which in-person or mail-in absentee voting is available for other qualified voters.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The state compliance standards justify the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.079, 117A.030(2), and 42 U.S.C. 1973ff-1.

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

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

This administrative regulation will not generate any additional revenue for state or local governments 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 the subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments 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 (+/-):

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)**

201 KAR 1:190.[Computer-based] Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261(4)

STATUTORY AUTHORITY: KRS 325.240(4), 325.270(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.270 requires the board to conduct examinations for individuals seeking to become certified public accountants. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions. (1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university includes auditing, tax, accounting standards, principles, or processes~~[a course that contains in the course prefix or title, the word accounting or a substantially-equivalent word]~~.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that~~prepared and graded the paper and pencil-based Uniform CPA Examination and now~~ prepares and grades the Uniform CPA~~[computer-based certified public accountant]~~ Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program~~["Conditional credit" means the procedure utilized by the board for the paper and pencil-based licensure examination that allowed an exam candidate who received a passing score of seventy-five (75) or higher on two (2) or more of the sections of the examination and a grade of fifty (50) or higher on each section taken but not passed during the same examination to retain the passing scores earned only for the next six (6) examinations regardless of whether the candidate sat for the future examinations]~~.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course where a student earns credit at a university or college based upon the student's

personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting ~~courses~~subjects.

(8)~~[(6)]~~ "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA~~[computer-based certified public accountants]~~ Examination.

(9)~~[(7)]~~ "Official transcript" means an official document issued~~by [record from]~~ a college or university that specifies the college course work completed, degrees awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(10)~~[(8)]~~ "Prometric or its successor" means the testing service in charge of administering the Uniform CPA~~[computer-based certified public accountants]~~ Examination.

(11)~~[(9)]~~ "Quarter hour" means 66/100ths of a semester hour.

(12)~~[(10)]~~ "Testing window" means the two (2) months out of each three (3) month period during a calendar year when an exam candidate may sit for the Uniform CPA~~[computer-based certified public accountants]~~ Examination.

(13)~~[(11)]~~ "Uniform CPA Examination" means the computer~~[paper and pencil]~~ based version of the licensure examination administered by the AICPA~~[board prior to January 1, 2004]~~.

Section 2. Examination Sections. The board has adopted the Uniform CPA~~[computer-based certified public accountants]~~ Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections~~to be~~ included on this examination shall be:

(1) Auditing and Attestation~~[- This section replaces the auditing section on the paper and pencil-based examination];~~

(2) Financial Accounting and Reporting;

(3) Regulation~~[- This section replaces the accounting and reporting section on the paper and pencil-based examination]; and~~

(4) Business Environment and Concepts~~[This section replaces the business law and professional responsibilities section on the paper and pencil-based examination.]~~

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score. (1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window.

(5)~~[Conditional credit received under the paper and pencil examination shall be transferred to the four (4) sections of the computer-based examination as follows:~~

(a) Accounting and Reporting to Regulation;

(b) Financial Accounting and Reporting remains the same;

(c) Auditing to Auditing and Attestation; and

(d) Business Law and Professional Responsibilities to Business Environment and Concepts.

(6) Transition period for conditional credit.

(a) An exam candidate awarded conditional credit on the paper and pencil examination shall be allowed a transition period to complete the remaining sections of the computer-based certified public accountants examination.

(b) The transition period shall begin to run January 1, 2004 and last until the candidate utilizes the opportunities to sit for the examination remaining to him or her if the paper and pencil examination was still in effect.

(c) This shall be six (6) testing windows or less, or the number of opportunities remaining under the paper and pencil examination

multiplied by six (6) months, whichever occurs first.

(d) This time period shall control even when a passing score on a section of the computer-based examination is received.

(e) Failure to receive a passing score on the remaining sections of the examination at the conclusion of this transition period shall result in the conditional credit expiring.

(7)(a) When an exam candidate[without conditional credit] initially receives a passing score on a section of the Uniform CPA [computer-based certified public accountants] Examination, the candidate shall have[a minimum of] eighteen (18) months following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the[computer-based] examination.

(a)[(b)] Failure to receive a passing score on the remaining sections of the[computer] examination within the eighteen (18) months shall result in the expiration of the initial passing score but not other sections passed during that eighteen (18) month period.

(b)[(e)] All sections of the[computer-based] examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(6)[(8)] An additional number of opportunities to sit for the examination and maintain any[earned conditional credit or] passing scores beyond the restrictions contained in this section may be granted at the discretion of the board for good cause.

Section 4. Initial Examination Applicants. An applicant shall submit an application to sit for the examination. The applicant shall submit:

(1) A completed "Application for the Uniform CPA[Certified Public Accountant] Examination" that includes the following information:

(a) The applicant's name, address, primary[and secondary] telephone number[numbers], date of birth, mother's maiden name, and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit documentation[an identification number] issued by the appropriate[a] federal agency that has authorized the candidate to enter and remain in the United States during the testing period;

(b) The state of which the applicant is a legal resident;

(c) An e-mail address;

(d) Whether the applicant has:

1. Ever changed his or her name; and if so, a list of the prior names;

2. Taken the Uniform CPA Examination[or the computer-based certified public accountant examination] before; and if so, the date and state where it was taken;

3. Been convicted, plead guilty, entered an Alford plea or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation; and if so submit with the application a:

a.[-a] Copy of the judgment, or sentence of conviction;

b. Kentucky Administrative Office of the Courts Criminal Court Criminal Background Check form AOC-RU-004, or similar document from the out of state agency where the conviction was entered[-]; and

c.[a] Letter of explanation[shall be attached to the application];

4. Been denied admission to the Uniform CPA Examination[or the computer-based certified public accountant examination]; and if so, a letter explaining the reason, date, and jurisdiction of denial shall be attached to the application; and

5. Had disciplinary action taken against any professional license; and if so, a letter indicating the jurisdiction, date of action, a copy of all records associated with the action, and an explanation of the circumstances shall be attached to the application;

(e) The specific section or sections of the examination the applicant is applying to take;

(f) If applicable, an Exam Applicant Special Accommodations Request Form requesting a reasonable accommodation in testing due to a disability supported by documentation described in the form[the applicant requests accommodations to the exam administration because of a disability that limits one (1) or more of his or her major life activities (e.g., walking, hearing, speaking, seeing, reading, or writing)], a description of the disability and requested accommodations from the applicant and written documentation from an appropriately-licensed health care

professional supporting the requested accommodation:

1. The documentation shall include a diagnosis of the disability and a specific recommendation and justification for the requested accommodation.

2. The board shall not be responsible for the costs associated with[of] obtaining the required documentation[diagnosis and recommendation], but shall be responsible for the costs of reasonable accommodations that are provided to the applicant;

(g) The names of the colleges from which a transcript shall be attached to the application;

(h) The signature of the applicant certifying that:

1. The information in the application is true and correct;

2. The applicant:

a. Is applying for admission to the Uniform CPA[computer-based certified public accountants] Examination in conformity with Kentucky law;

b. Has submitted the required application, attachments, and fees;

c. Has read and agrees to abide by the applicable laws and administrative regulations; and

d. A certification by a notary public that the application was subscribed and sworn to before the notary.

(2) An official transcript from each college or university which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation.

(a) Effective January 1, 2015, an applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or the DSST program.

(b) Effective January 1, 2015, an applicant who received credit hours through the CLEP program or from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).

(c) The educational requirements shall have been completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations at the time the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges;

2. The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours purportedly earned and the accreditation of an educational institution; or

3. A postsecondary educational institution outside the United States whose course credits are certified by a[the Foreign Academics Credentialing Service (FACS) or another] credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. or NASBA.

(d)[(b)] The certification required by subparagraph (c)[(a)]3. of this subsection shall indicate[state that] the:

1. Foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation;[and]

2. Applicant had a major or concentration in accounting as defined in this administrative regulation;

3. Title of all courses the applicant completed outside of the United States; and

4. Amount of credit awarded to the applicant for each course;[(c) A copy of the "Request for Advisory Evaluation of Foreign Credentials" form that FACS requires an applicant to use to request certification from its service.]

(3) A fee in the amount of:

(a) Thirty (30) dollars for the application; and

(b) Thirty (30) dollars for each section of the examination the

candidate intends to take.

(4) The fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the "Kentucky State Board of Accountancy". If the institution the check or money order is drawn on does not honor the check or money order, the application shall be deemed incomplete and returned.

Section 5. (1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be ~~entered~~[forwarded to NASBA for entry] into the data bank operated by ~~NASBA~~[that association]. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam[advise the board that the candidate is eligible to schedule a date and time to sit for the examination with Prometric or its successor].

(3) ~~Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate which states the candidate~~[The executive director shall notify a candidate that he or she] is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.[This notification shall be known as a notice to schedule.]

(4)(a) A candidate shall have six (6) months from the date of issuance by ~~NASBA~~[the board] of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule may be extended for good cause.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexamination application as described in Section 9 of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA[computer-based certified public accountants] Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon[an invoice] from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon[notice to schedule] and require the candidate to submit a reexamination application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct. (1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam[Reexamination] Applicants. (1) Upon request the board shall mail a reexam[reexamination] application to every candidate who fails to pass the Uniform CPA[computer-based] Examination.

(2) The reexam[reexamination] application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam[reexamination] application is not delivered by the United States Postal Service.

(4)(a) To obtain approval to sit as a reexam candidate, the individual shall return the reexam[reexamination] application to the board. The reexam[reexamination] application shall contain the following information:

1. The applicant's name, current mailing address and current daytime telephone number, and date of birth[, mother's maiden name and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States];

2. The specific sections of the examination the applicant is requesting to sit for;

3. A statement that the required fee is attached;

4. If the applicant requests accommodations to the exam administration because of a disability, whether the required information is on file or is attached to the reexamination application; and

5. The applicant's signature.

(b) The reexam[reexamination] application shall be received in the board's office prior to the reexam[reexamination] candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam[reexamination] application with the reexam[reexamination] fee.

(b) The reexam[reexamination] fee shall be thirty (30) dollars per section. The reexam[reexamination] fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be deemed incomplete and returned.

(6) A reexam[reexamination] candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexam[reexamination].

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam[reexamination] application.

(8) The reexam[reexamination] candidate shall comply with the requirements of Sections 6, 7, and 8 of this administrative regulation.

Section 10.[The executive director shall review] Examination grades received from NASBA[before they are released to a candidate. Upon approval of the executive director, a copy of an examination candidate's grades] shall be;

(1) Posted on the board's Web site; and

(2) A copy mailed to each affected[him or her at the last known address provided by the] candidate.

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

(a) "Application for the Uniform CPA Examination 2014[Certified Public Accountant Examination", 2006, Kentucky State Board of Accountancy];

(b) "Reexam[Reexamination] Application for the Uniform CPA Examination", 2014[Certified Public Accountant Examination", 2006, Kentucky State Board of Accountancy]; and

(c) "Exam Applicant Special Accommodations Request Form", 2014["Request for Advisory Evaluation of Foreign Credentials", 2003].

(2) This material[These documents] may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

TONI CARVER SMITH, President

APPROVED BY AGENCY: August 13, 2014

FILED WITH LRC: August 15, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2014 at 10 a.m., EST at the administrative offices of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the meeting, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements and procedures to sit for the CPA Exam.

(b) The necessity of this administrative regulation: To list the requirements one must complete to sit for the exam.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.270(2) authorizes the Board to establish standards and fees governing the exam. The standards and fees are included in the regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It lists the standards and fees associated with taking the exam.

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

(a) How the amendment will change this existing administrative regulation: It deletes language and procedures that are no longer applicable and restricts credit given for certain courses.

(b) The necessity of the amendment to this administrative regulation: To delete language and procedures no longer applicable to eliminate confusion on the part of exam applicants. Also to limit credit given for certain courses.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the Board to establish exam procedures by regulation.

(d) How the amendment will assist in the effective administration of the statutes: Specifying the exam procedures.

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

administrative regulation: Approximately 300 exam candidates per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Language that is no longer applicable is being deleted and some course credit will be limited.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees have not changed from when the regulation was enacted in 2004 which are thirty (30) dollars for the initial application fee and thirty (30) dollars per section.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eliminating language that is no longer applicable and confusing. Also candidates will be made aware of credit limits placed upon some coursework.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees have been in the regulation since it was enacted in 2004.

(9) TIERING: Is tiering applied? No, since all candidates are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.261(4) and 325.270(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated for local and state government by this amendment to this regulation since fees are not being increased. However the agency receives approximately \$90,000/yr in exam 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? Approximately \$90,000.

(c) How much will it cost to administer this program for the first year? There is no precise estimate since processing exam applications are a normal part of the duties of the board employees.

(d) How much will it cost to administer this program for subsequent years? There is no precise estimate since processing exam applications are a normal part of the duties of the Board employees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increase in fees with this proposed amendment therefore there will be no change regarding the fiscal impact of this proposed amendment.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)**

201 KAR 30:125. Continuing education for appraisers.

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

STATUTORY AUTHORITY: KRS 324A.015(1), 324A.020, 324A.035(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.015(1) and 324A.020 authorize the board to promulgate administrative regulations and perform functions and duties necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for the renewal of certification or licensure of appraisers of real property in federally related transactions. This administrative regulation establishes the continuing education requirements for appraisers.

Section 1. Continuing Education: Number of Hours Required.

(1) A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and an associate real property appraiser shall:

(a) Complete fourteen (14) hours of board approved continuing education, pursuant to 12 U.S.C. 1116 and 3345, and Section 2 of this administrative regulation, each license year prior to May 16 of the current renewal year; and

(b) Submit to the board proof of course completion prior to May 31 of the current renewal year.

(2) Noncompliance with~~either of~~ the requirements specified in this administrative regulation~~[section]~~ shall cause the applicant's renewal application to be late, which shall result in a \$200 late fee for renewal.

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

(a) Approved continuing education courses; or

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

(2) Appraisal educational programs and processes shall include:

(a) Teaching a course. Credit for instructing any given course shall only be awarded one (1) time during a continuing education cycle;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities.

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

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

(b) Subject is designed to ensure that an appraiser's skill, knowledge, and competency in real estate appraisal shall be maintained or increased; and

(c) Has been approved by the board.

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

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

(a) Ad valorem taxation;

(b) Arbitration, dispute resolution;

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

(d) Development cost estimating;

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

(f) Land use planning, zoning;

(g) Management, leasing, timesharing;

(h) Property development, partial interests;

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

(j) Real estate litigation, damages, condemnation;

(k) Real estate financing and investment;

(l) Real estate appraisal related computer applications;

(m) Real estate securities and syndication;

(n) Green building construction;

(o) Impact of seller concessions;

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

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

(6) Real estate appraisal related field trips shall be acceptable for credit toward the continuing education requirements, except transit time to or from the field trip shall not be included unless instruction occurs during the transit time.

(7)(a) Each credential holder shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and May 15 of each even numbered year.

(b) Equivalency shall be evaluated through the Appraiser Qualifications Board Course Approval Program.

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

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

(a) Returning from active military duty; or

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

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

Section 3. Incorporation by Reference. (1) "Course Approval Program Application", October 2012, is incorporated by reference.

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

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014, at 9:00 a.m., in the office of the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes continuing education requirements for certified and licensed appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the continuing education requirements for certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by setting forth continuing education requirements for certificate holders.

(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 simplify the reporting period for renewals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the board to review continuing education submission in time for the renewal of a certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation allows the board to ensure that continuing education submissions are made in time for the renewal of a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,800 persons certified by 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: A licensee will be required to obtain continuing education for renewal within the period identified.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation requires compliance with the educational requirements promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the educational requirements promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board (Amendment)

201 KAR 30:180. Distance education standards.

RELATES TO: KRS 324A.035(3)(d), (f)

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

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

Section 1. Definitions. (1) "Distance education course" means an organized instructional program presented through the use of computer technology, satellite transmission, or optical fiber

transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means an organization or individual offering an education course via computer technology, satellite transmission, or optical fiber transmission.

Section 2. Limitations on Distance Education Courses. A distance education course that involves less than two (2) hours of credit shall not be approved.

Section 3. Standards for Distance Education Course Approval.

(1) To qualify for education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

(a) ~~The~~ Distance Education Course Approval Application["]; and

(b) ~~The~~ Distance Education Instructor Application["].

(3) Board approval shall be given to a distance education course ~~that~~^{which} provides competent instruction in real estate appraisal to establish, maintain, and increase the student's skill, knowledge, and competency in real estate appraising.

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers.

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content reviewer shall be an educator who is academically qualified in appraisal subjects who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval, to the board, for each class submitted, from one (1) of the following institutions:

(a) The International Distance Education Certification Center (IDECC);

(b) A college or university that is accredited by the Commission on Colleges; or

(c) A regional or national accrediting agency recognized by the U.S. Secretary of Education and the Appraiser Qualifications Board of the Appraisal Foundation, for each education course being applied for approval.

(7) Every distance education course shall include a final examination with a comprehensive assessment of the student's overall mastery of the materials presented in the course which shall be administered after the completion of the course by:

(a) A proctor approved by the board in accordance with Section 5 of this administrative regulation; or

(b) Electronically on a computer workstation or other device.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for education courses delivered via distance education may be obtained from the following:

(a) A college or university;

(b) A community or junior college;

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission;

(e) A proprietary school; or

(f) An education provider approved by the board in accordance with 201 KAR 30:150.

(2) Credit shall be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

(a) Ad valorem taxation;

(b) Arbitration;

(c) Business courses related to the practice of real estate appraisal;

(d) Development cost estimating;

(e) Ethics and standards of professional practice;

(f) Land use planning, zoning, and taxation;

(g) Management, leasing, brokerage, and timesharing;

(h) Property development;

(i) Real estate appraisal;

(j) Real estate financing and investment;

(k) Real estate law;

(l) Real estate litigation;

(m) Real estate related computer applications;

(n) Real estate securities and syndication;

(o) Real property exchange;

(p) Valuation of green buildings;

(q) Impact of seller concessions;

(r) The impact of personal property on the value of real property; or

(s) The impact of business value on real property value.

(3) Credit shall be granted for qualifying education distance education courses that cover Required Core Curriculum topics listed in 201 KAR 30:190, Section 8.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with:

1. A minimum of five (5) years of experience; and

2. Competency in the specific area of appraisal subject being taught;

(b) Hold a Certified Distance Education Instructor certification from the International Distance Education Certification Center;

(c) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30; and

(d) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced or added, the credentials of the new instructor shall be submitted for approval before that instructor may teach a course.

(3)(a) A proctor shall be the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same requirements as those for distance instructors ~~established~~^{specified} in subsections (1) and (2) of this section.

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Professionally affiliated with a real estate sales or real property appraisal office or business;

4. A member of the student's family; and

5. Professionally or personally associated with the student.

(d) A proctor may be selected from different professions, including:

1. A university, college, or community college professor or instructor;

2. A registered public librarian;

3. A public school administrator;

4. A Notary Public;

5. An attorney; or

6. A nominee of the provider approved by the board if the nominee has qualifications substantially equivalent to members of the groups identified in this paragraph.

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation:

a. With a picture ID;

- b. With another identification document, including driver's license or student ID card; or
- c. By familiarity;
- 2. Observe the student taking the exam;
- 3. Assure that the student does all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource;
- 4. Verify that the calculator used during the exam shall be a nonprogrammable, hand-held calculator;
- 5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;
- 6. Provide the student with the URL for the course examination which shall be supplied by the provider if a request for the examination is received from the student;
- 7. Assure that the student adheres to the time limit requirement specified for the examination;
- 8. Assure that the examination shall be completed in one (1) sitting;
- 9.a. Assure that, if there is an interruption, the board shall be notified that the examination was interrupted and the reason for the interruption; and
- b. The board, or its designee, shall approve the request to resume; and
- 10. Upon completion of the examination, submit a certificate that [which] confirms that the:
 - a. Proctor verified the identity of the student;
 - b. ~~[that the]~~ Examination was completed on the date assigned during the time permitted; ~~[and]~~ and
 - c. ~~[that the]~~ Student has done all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites other than the examination.

Section 6. Course Delivery Medium. (1) A course delivery system shall contain provisions for interactivity including:

- (a) Instructor feedback with a response time of no more than two (2) business days from student lesson assignment, quiz submissions, and inquiries;
 - (b) Readily available opportunity for student inquiry and general questions concerning the course;
 - (c) Timely clarification of confusing points or errors in the study text; and
 - (d) Instructor's review of a student's activity in the course at least every thirty (30) days to assess progress determine the cause of potential delays in the student's completion of the course.
- (2) The provider shall provide the board's course reviewers with:
- (a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and
 - (b) The URL and any username or password required for free access, if Internet course delivery shall be used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination Certification.

(4) A Distance Education Course Evaluation of the student's on-line experience during the course shall be submitted at the conclusion of the course.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and ~~[a satisfactory score on]~~ the final examination that contains:

- (a) The course name and the provider's course number exactly as it appears on the Distance Education Course Approval Application;
- (b) The student's name and address;
- (c) Whether the student passed the course;

(d) An original authorized signature of a representative for the course provider;

(e) The dates and location that the course was in session;

(f) Information that the student was in attendance a minimum of fifty (50) minutes of each hour of instruction time excluding lunch and breaks; and

(g) The address and telephone number of the provider[containing, at a minimum, the information on the Real Estate Appraisers Board form].

Section 8. Fees. A provider shall pay a \$100 nonrefundable fee in connection with each distance education course submitted for approval by the board for the review of the distance education delivery system and the course content.

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

- (a) "Distance Education Course Approval Application", 2005;
- (b) "Distance Education Student Independent Work Certification", 2005;
- (c) "Distance Education Proctor's Examination Certification", 2005;
- (d) "Distance Education Course Evaluation", 2005; and
- (e) "Distance Education Instructor Application", 2007.

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

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014, at 9:00 a.m., in the office of the Kentucky Real Estate Appraisers Board; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for distance education for certification for certificate holders acquiring continuing education.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the continuing education requirements for certificate holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing educational requirements for certificate holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for distance continuing education providers.

(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 delineates the requirements for distance education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to identify the requirements for distance education courses to qualify.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing educational requirements for certificate holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will broaden the courses that are available to licensees and lowers the costs to providers of courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,800 persons certified by 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: A licensee will be have more choices for continuing education.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(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 will be required to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the requirements of the administrative regulation are applicable to all providers. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation establishes the general requirements for distance education courses.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of

the appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

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 Real Estate Appraisers Board (Amendment)

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

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

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

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

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

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

licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351) as administered by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC); and

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

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

(a) Complete the Application for Out-of-state Resident Certification;

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

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

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

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

~~(f) Certify completion of the experience requirements in 201 KAR 30:050, Section 2, for the type of certification requested on the Application for Reciprocal Appraisal License/Certification; and~~

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

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

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

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

(b) "Application for Reciprocal Appraisal License/Certification", June 2013.

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

HAROLD G. BRANTLEY, Chair

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 14, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014, at 9:00 a.m., in the office of the Kentucky Real Estate Appraisers Board; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director,

Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for certification for persons seeking certification who are certified in another state.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the requirements for certified and licensed appraisers from another state to obtain certification or licensure in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for applicants who are certified in another state.

(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 expands the means for verification of good standing and removes reporting requirements covered elsewhere.

(b) The necessity of the amendment to this administrative regulation: This amendment allows the board to issue reciprocal licenses.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the board to administer reciprocal licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons currently involved in obtaining licensure or certification by the board from other states, but estimates the number to be under 100 per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to file an application and demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying beyond the standard application fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons seeking licensure from another state that is in good standing with the federal oversight agency, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, can be licensed or certified in Kentucky through the process established in this administrative regulation.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

The board's operations are funded by fees paid by certificate holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3351

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation. 12 U.S.C. 3351 mandates that the states institute a reciprocity process for licensure or certification

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 324A.035(1), (3), 324A.075, 12 U.S.C. 3331-3351.

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 Licensure for Marriage and Family Therapists (Amendment)

201 KAR 32:035. Supervision of marriage and family therapist associates.

RELATES TO: KRS 335.320(6), 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of three (3) to six (6) supervisees with the supervisor.

(2) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(3) "Raw data" means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.

(4) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Effective January 1, 2016[2014], a board-approved supervisor shall be:

(a) An American Association of Marriage and Family Therapists (AAMFT) approved supervisor in good standing, who has been licensed in Kentucky for a minimum of five (5) years;

(b) An AAMFT supervisor in training who has been licensed in Kentucky for a minimum of five (5) years; or

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy with the last eighteen (18) months of experience being in Kentucky; ~~or~~

~~(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.~~

(2) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor in training in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the ~~fifteen (15)~~ hours of continuing education required for licensure renewal.

(c) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both KRS Chapter 335 and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(3) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the ~~fifteen (15)~~ hours of continuing education required for licensure renewal.

(a) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both KRS Chapter 335 and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and
4. Supervisor responsibilities such as logs, treatment planning, and recording.

(4) To renew as a board-approved supervisor, an AAMFT approved supervisor shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy. The course shall be attended live or on-line. The one (1) hour shall be included in the ~~fifteen (15)~~ hours of continuing education required for licensure renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's ~~current~~ clinical work within the last twelve (12) months;

(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee; and

(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment according to the currently accepted diagnostic standards ~~as established in the Diagnostic and Statistical Manual of Mental Disorders~~;

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associate shall maintain copies of the completed Supervision Log, which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than six (6) marriage and family therapist associates at the same time, unless approved by the board.

(2) A request to supervise more than six (6) marriage and family therapist associates shall be submitted to the board for

approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family therapist associates.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional 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) The supervisee shall notify the board of these circumstances and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision. The written plan shall include:

~~(a)~~ ~~[a-]~~ The name of the temporary supervisor;

~~(b)~~ ~~[b-]~~ Verification of the credential held by the temporary supervisor;

~~(c)~~ ~~[c-]~~ An address for the temporary supervisor; and

~~(d)~~ ~~[d-]~~ A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a) "Diagnostic and Statistical Manual of Mental Disorders", 2009; and~~

~~(b) "Supervision Log", 8/2014, is incorporated by reference [10/2011].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky ~~Office~~ Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANE PROUTY, Board Chair

APPROVED BY AGENCY: August 13, 2014

FILED WITH LRC: August 13, 2014 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2014 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 PM, September 30, 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, Asst. Attorney General, Office of the Attorney General, 700 Capitol 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:

(a) What this administrative regulation does: The regulation establishes the qualifications for supervisors, the subjects to be addressed during the supervision and the methods of supervision.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the qualifications of supervisors and the expectations of the supervision for the supervisor and supervisee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations for the practice and licensure of marriage and family therapists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth clearer explanation of the supervision program and the requirements to become a supervisor, requiring all supervisors to have a Kentucky issued Marriage & Family Therapist 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: The amendment requires all supervisors to be licensed in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify who can be a supervisor in Kentucky and it ensures associates in Kentucky are being supervised by practitioners licensed in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying the requirements to be a supervisor.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will clearly list the qualifications to be a supervisor so licensees and associates will know if a licensee can serve as a supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 141 Marriage & Family Therapist Associates and 114 supervisors of which approximately ten (10) do not have a Kentucky license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Marriage & Family Therapy Associates will be required to obtain a supervisor who is licensed in Kentucky in addition to meeting the other supervisor requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Supervisors who are not licensed in Kentucky will need to apply for licensure and pay the fee of \$100 to \$175, if not license cannot be reinstated. Supervisees pay the supervisor for supervision, thus the cost is dependent on the duration of supervision and the individual supervisor's rates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All associates and licensees will be operating under the same understanding of supervision and its duration and requirements to be a supervisor.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all licensees and supervisees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Marriage & Family Therapists is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320 and KRS 335.332

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. Expenditures will not be affected by the 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 from this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure and Certification for Dietitians
and Nutritionists
(Amendment)

201 KAR 33:010. Fees.

RELATES TO: KRS 310.050(1)

STATUTORY AUTHORITY: KRS 310.041(1), (5), (9), 310.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041(1) and (9) require the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists to promulgate administrative regulations for the licensure and certification of dietitians and nutritionists. KRS 310.041(5) and 310.050 require the board to establish appropriate licensure and certification fees by administrative regulation. The administrative regulation establishes fees for dietitian and nutritionist licensure.

Section 1. Application Fee. (1) The application fee for licensure as a dietitian shall be fifty (50) dollars.

(2) The application fee for certification as a nutritionist shall be fifty (50) dollars.

(3) The application fee for dual licensure as a dietitian and certification as a nutritionist shall be fifty (50) dollars.

(4) Application fees shall not be refundable.

Section 2. Renewal Fees and Penalties. (1) The annual renewal fee for licensure or certification shall be fifty (50) dollars for each credential;

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be twenty-five (25) dollars for each credential; and

(3) The reinstatement fee for licensure or certification renewal after the end of the sixty (60) day grace period shall be fifty (50) dollars for each credential.

(4) Renewal and reinstatement fees shall not be refundable.

(5) In order to be considered for reinstatement, a retired licensee shall pay a reinstatement fee of fifty (50) dollars and all renewal fees from the date of election of that status.

Section 3. Duplicate Registration Fees. The fee for a duplicate license or certificate shall be ten (10) dollars.

Section 4. Inactive and Retired Status. (1) A licensee who holds an inactive license shall pay fifteen (15) dollars annually to establish or retain inactive status.

(2) A licensee who retires a license shall not be required to pay an annual fee licensure.

AVA H. EAVES, Chair

APPROVED BY AGENCY: July 30, 2014

FILED WITH LRC: July 31, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2014, at 10:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014, 11:59 p.m. 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: Ava H. Eaves, Board Chair, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky 40222, phone (502) 564-3296, ext. 222, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Ava H. Eaves

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for dietitians and nutritionists.

(b) The necessity of this administrative regulation: KRS 310.041(5) and 310.050 requires the board to establish fees by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes fees as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes fees so that applicants will know the fees for licensure and certification.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the fee for dual licensure/certification.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to avoid confusion about the fee for dual licensure/certification.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the board to set fees for licensure and certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the fee for dual licensure/certification.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Approximately nine (9) people are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A dietitian meets qualifications to be certified as a nutritionist; therefore, dual designation is recognized for a fee of fifty (50) dollars instead of \$100.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): fifty (50) dollars for a dual designation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant will hold the dual designation of licensed dietitian/certified nutritionist.

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

(a) Initially: No new costs are required to implement the regulation.

(b) On a continuing basis: \$0

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

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

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

(9) TIERING: Is tiering applied? No, all applicants for dual designation will pay the same fee.

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 Licensure and Certification for Dietitians and Nutritionists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by administrative regulation: KRS Chapter 310.041(5) and 310.050.

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

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

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

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-): Fifty (50) dollars for each dual designation applicant, which does not represent additional revenue for the board.

Expenditures (+/-): \$0.

Other Explanation: The amendment will not create any new revenue for the board.

**GENERAL GOVERNMENT CABINET
Kentucky Department of Veterans' Affairs
Kentucky Veterans' Program Trust Fund
(Amendment)**

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

RELATES TO: KRS 40.310(3), (7), 40.353(5)[14A.055], 40.460(2)(b), 141.444, 186.162(2), 186.168, 434.444(5)

STATUTORY AUTHORITY: KRS 40.310(3), (7), 40.450(3), 40.460(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.450(3) requires the department to promulgate administrative regulations required for the effective administration of KRS 40.410 through 40.560. KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from a governmental unit and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.410(7) requires to department to manage the fund and authorize expenditures once the board has approved a request for funds. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund[and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund]. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for expenditures made from[programs financed by] the fund.

Section 1. Definitions. (1) "Board" means the Board of Directors of the Kentucky Veterans' Program Trust Fund.

(2) "Commissioner" means the Commissioner of the Kentucky Department of Veterans'[Veterans] Affairs.

(3)[(2)] "Fund" means the Kentucky Veterans' Program Trust Fund.

(4)[(3)] "Honorably separated veteran" means an individual discharged or released from the military with an honorable discharge, a discharge under honorable conditions, or a general discharge.

Section 2. Expenditures and Fundraising. (1) Upon board approval in accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended for a program or request that provides assistance that directly benefits a veteran, including the following veterans and activities:

(a) A homeless veteran;

(b) An indigent veteran in need of emergency assistance;

(c) An incarcerated veteran in need of emergency assistance that cannot otherwise be provided by the criminal justice system;

(d) A wounded, disabled, or other veteran who needs transportation to a VA medical facility and who cannot arrange for transportation because of a lack of financial means;

(e) Assist a veteran to obtain employment through job fairs, training programs, job placement services, other similar programs, or a combination of these;

(f) A wounded or disabled veteran as determined by the U.S. Department of Veterans' Affairs, and including those veterans diagnosed with post-traumatic stress disorder arising from military service;

(g) A wounded or disabled veteran returning from combat in need of specialized therapeutic services that cannot be provided by the U.S. Department of Veterans' Affairs or the Kentucky Department of Veterans' Affairs;

(h) Dissemination of veteran benefit information through circulars, brochures, and other media;

(i) Services or goods for a veteran who is a resident in a long-term care facility operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department but that will improve the veteran's quality of life;

(j) Services or goods for state veterans' cemeteries operated by the Kentucky Department of Veterans' Affairs that cannot otherwise be provided by the department, but that will enhance the dignity, solemnity, and respect shown for each veteran interred at the cemetery;

(k) Other assistance to ensure that each veteran interred in a

state veterans' cemetery receives burial honors befitting of the veteran's service to the Commonwealth and country;

(l) Assistance to a veterans' service organization for training members to assist veterans; and

(m) Programs, events, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's veterans.

(2) Money appropriated from the fund shall not be expended for:

(a) Construction, renovation, or maintenance of a meeting hall, clubhouse, or similar facility for use by a veterans' organization;

(b) Entertainment costs;

(c) A benevolent or charitable endeavor that does not primarily benefit veterans;

(d) Support of a federally administered facility if the support is prohibited by law; or

(e) A program that is already funded by the state or federal government.

(3)[Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:

(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;

(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;

(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;

(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;

(e) Provides a service, supply, program, equipment or other expenditure essential to the operation of the Kentucky Veterans Center or other Kentucky veterans nursing homes that would otherwise not be available; or

(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.

(2) Fundraising. If fundraising on behalf of the fund,[a] the fund may accept a gift, donation, or grant from an individual, a corporation, or government entity.[b] Solicitation of funds or fundraising on behalf of the fund shall be made unless approved by the commissioner in accordance with KRS 14A.055.]

Section 3. Board of Directors. (1) The board of directors shall consist of eleven (11) members, including:

(a) The commissioner;

(b) The commissioner's designee from Kentucky Department of Veterans'[Veterans] Affairs;

(c) A member of the:

1. Joint Executive Council of Veterans Organizations of Kentucky; and

2. Governor's Advisory Board for Veterans'[Veterans] Affairs;

(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:

1. The American Legion, Department of Kentucky;

2. The Veterans of Foreign Wars, Department of Kentucky;

3. The Disabled American Veterans, Department of Kentucky; [and]

4. AMVETS, Department of Kentucky; and

5. The Kentucky National Guard; and

(e) Two (2)[Three (3)] at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chair[chairman] of the board of directors.

(b) The board of directors shall hold an election to fill the position of vice-chair[vice-chairman].

(3)[a] An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors.

[b] The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(4) At least one (1)[A] member of the board of directors shall

be an honorably separated veteran.

(5) Terms of members.

(a) The initial appointments to the board of directors shall be as established in subparagraphs 1. through 3. of this paragraph.~~[follows:]~~

1. A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of three (3) years.

2. A member appointed pursuant to subsection ~~(1)(2)~~(d) of this section shall serve for a period of two (2) years.

3. A member appointed pursuant to subsection ~~(1)(2)~~(e) of this section shall serve for a period of one (1) year.

(b) After the initial appointments established pursuant to~~[under]~~ paragraph (a) of this section, a member shall serve for a period of three (3) years.

(c) A member shall serve until the member's~~[his]~~ successor is appointed.

(6) The board of directors shall:

(a) Meet at the call of the commissioner~~[chairman]~~;

(b) Inform organizations represented on the board of each action considered or taken by the board;

(c) Review projects and recommend approval or disapproval;

(d) Prioritize projects;

(e) Investigate the need for a specific project or program;

(f) Establish guidelines for a project;

(g) Make a recommendation to the commissioner for the utilization and control of funds in the~~[Veterans' Program Trust]~~ fund; and

(h) Prepare an annual report providing an accounting of the ~~[Veterans' Program Trust]~~ fund assets and financial activity for each fiscal year.

(7) The commissioner~~[chairman]~~ of the fund shall assign duties as appropriate to department~~[his]~~ staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and approved projects.

Section 4. Board Procedures. (1) Board meetings shall be conducted in a civil and cordial manner.

(a) A quorum for voting purposes shall be reached upon six (6) directors being present.

(b) A request may be approved if a simple majority of those present vote in favor of the request.

(c) Abstentions, votes indicating "present", and any other form of vote other than "yes" or "no" shall not be permitted.

(d) In the case of a tie vote, the chair may call for more discussion and a second vote. If a tie results on the second vote, the request shall be tabled and only brought before the board by a new request at a future meeting.

(e) Each director may discuss procedural matters with an applicant prior to a board meeting, but shall not attempt to influence other directors on how to vote until the chair convenes the board meeting, the applicant makes a presentation, and discussion takes place.

(f) Votes on every issue shall be recorded in the minutes indicating the nature of the request, the final vote, the name of each voting member who voted, and how that member voted.

(2)(a) For alternatives to in-person voting, the chair shall authorize meetings via telephone conference call as well as proxy voting if the chair concludes special circumstances warrant an alternative such as the requester is outside the country or is disabled.

(b) Any person, agency, or organization requesting funds from the fund shall make a request in person to the Board of Directors at a scheduled board meeting unless the chair authorizes presentation by electronic means.

(3)(a) Once funds are authorized, the requesting person, agency, or organization shall file a written report detailing how the money requested fulfilled the purpose of the request within thirty (30) days of fulfilling the purpose of the request.

(b) Funds shall not be transferred to the person, agency, or organization until the funds are immediately needed to satisfy the purpose of the request.

(c) Funds obligated but not used within one (1) year of approval shall be returned to the Trust Fund and a new request

shall be submitted to the Board of Directors if the requesting party still seeks to undertake the project.

HEATHER FRENCH HENRY, Commissioner

APPROVED BY AGENCY: August 11, 2014

FILED WITH LRC: August 12, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2014, at 11:00 a.m., at 1111B Louisville Road. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dennis W. Shepherd, Staff Attorney, Office of the Commissioner, Department of Veterans Affairs, 1111B Louisville Road. Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dennis W. Shepherd

(1) Provide a brief summary of:

(a) What this administrative regulation does: provides for administration of Veterans' Program trust fund through the Department of Veterans Affairs and creates a board comprised of members of veterans' service organizations to review expenditure requests.

(b) The necessity of this administrative regulation: KRS 40.460(2) (b) creates Veterans' Program Trust Fund. This regulation is necessary to impose rules for expenditures, to provide for administration of fund, and to create and maintain a trust fund board of directors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from governmental units and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.460(2) (b) establishes the Veterans' Program Trust Fund. KRS 40.310 (7) authorizes the Kentucky Department of Veterans' Affairs to manage this Trust Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will continue to assist in the effective administration of KRS 40.460(2)(b) and KRS 40.310 (7) by providing rules for expenditures and for a trust fund board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide clear direction—but also flexibility—in Veterans' Program Trust Fund expenditures. The amendment also cleans up minor errors in the language and leaves it gender-neutral. It also sets rules of procedure such as the required number of board members to have a quorum, and creates rules of accountability to ensure the money expended is used according to the regulation.

(b) The necessity of the amendment to this administrative regulation: The regulation as currently written broadly permits expenditures that may not benefit veterans. Particularly Section 2(1)(d) provides for funds to a program that "Works with the public and private sectors to honor and recognize the service and sacrifice of veterans." Invites requests that are worded in this way, but aren't for programs that aren't of real benefit to veterans. In addition, there are currently no rules for making a presentation, for alternative means of voting (proxy, teleconference, etc.), or any guidelines for accountability.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation as amended more closely

conforms to content of authorizing statutes by more clearly delineating extent of permissible expenditures. Also the amendment eliminates reference to KRS 11A.055, which only relates to fundraising for 501c organizations and other specific programs, and not to fundraising for veterans or for the Veterans' Program Trust Fund.

(d) How the amendment will assist in the effective administration of the statutes: See response to (c), above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only organizations that request funds from Veterans' Program Trust Fund will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Organizations that request funds from Veterans' Program Trust Fund will need to establish that the program meets the criteria in the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualifying programs that provide services to veterans can receive assistance from Veterans' Program Trust Fund, with approval of the board and the Commissioner of the Department of Veterans Affairs.

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

(a) Initially: Trust fund is already operational and board is in place.

(b) On a continuing basis: Minimal transportation expenses for board operation; Department of Veterans Affairs maintains the trust fund accounts and conducts day-to-day administration of fund.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Veterans Program Trust Fund receives portions of fees for veteran-related license plates sold pursuant to KRS 186.162, voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual donations. Fines for misrepresenting military status would go into fund too, pursuant to KRS 434.444(5).

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established, directly or indirectly.

(9) TIERING: Is tiering applied? No. This regulation affects only the Department of Veterans Affairs, the Veterans' Program Trust Fund, its board, and those who make requests to board to fund programs for veterans. No government entities, businesses or organizations that are not intended to be subject to the regulation are affected by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only (Kentucky) Department of Veterans Affairs and Veterans' Program Trust Fund board will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.310(3); KRS 40.460(2) (b)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect. The Veterans' Program Trust Fund is already in place. Regarding (a) – (d) below, the Veterans Program Trust Fund is an

off-budget account, with revenues coming primarily from portions of fees for veteran-related license plates sold pursuant to KRS 186.162. The fund also receives voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual contributions. The amendment will have no effect on the amount of money the fund receives and no substantial effect on what the fund distributes.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging, snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(2) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(3) "Bowfishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

(4) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(5) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(6) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(7) "Temporary aquatic area" means an area temporarily

inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(8) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

- (a) The department's Division of Law Enforcement; or
- (b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

- (a) In a designated cove marked with signage and buoys;
- (b) From April 1 through October 31; and
- (c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this subsection shall display an international diving flag pursuant to ~~the requirements established in~~ 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection, ~~with the following provisions:~~

(a) A participant who is spearing fish shall:

- 1. Be completely submerged in the water where spearing takes place;
- 2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and
- 3. Only spear rough fish, ~~and~~
- (b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, and setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

- (a) Bait all hooks; and
- (b) Remove all caught fish.
- (3) A trotline, setline, or jug line shall be confiscated if:

(a) It is not properly labeled or tagged; or

(b) It is not checked or baited at least once every twenty-four (24) hours.

(4) A sport fisherman shall not use more than:

- (a) Two (2) sport fishing trotlines;
- (b) Twenty-five (25) setlines; or
- (c) Fifty (50) jug lines.

(5) Multiple sport fishermen in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

- (a) Set the trotline at least three (3) feet below the water's surface;
- (b) Not have more than fifty (50) single or multi-barbed hooks; and
- (c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) Sport fishing trotlines, jugs, or setlines shall not be used in the ~~following~~ waters established in paragraphs (a) through (d) of this subsection:

- (a) In the Tennessee River within 700 yards of Kentucky Dam;
- (b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

- 1. Ballard Wildlife Management Area lakes, Ballard County;
- 2. Peel Wildlife Management Area lakes, Ballard County; and
- 3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the ~~following~~ areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:~~;~~

- 1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;
- 2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;
- 3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;
- 4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;
- 5. McAlpine Dam downstream to the K & I railroad bridge;
- 6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;
- 7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or
- 8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9)(a) The Taylorsville Lake blue and channel catfish limits shall be an aggregate daily creel limit of fifteen (15).

(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

- (a) Poison;
- (b) Electrical devices;
- (c) Firearms; or ~~and~~
- (d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines as long as the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Giggling and Snagging. (1) Giggling and snagging season shall be February 1 through May 10, except as established ~~provided~~ in subsections (7) and (9) of this section.

(2) A person shall not:

- (a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as established ~~provided~~ in subsections (7) and (9) of this section;
- (b) Gig or snag from a platform;
- (c) Gig from a boat in a lake with a surface area of less than 500 acres;
- (d) Gig at night from a boat; or
- (e) Snag from a boat.

(3) A snagging rod shall be equipped with:

- (a) Line;
- (b) Guides;
- (c) A reel; and
- (d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used when snagging in:

- 1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as ~~established~~provided in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the~~following~~ areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as specified in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year round in ~~the~~that section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or~~and~~

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp; and

(c) 1. The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those ~~established~~described in paragraphs (a) and (b) of this subsection; and

2. In an area ~~established~~described in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gilled or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gilled or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. ~~Grabbing~~(Tickling and Noodling). (1) The grabbing season for rough fish~~, also known as tickling and noodling,~~ shall be June 1 to August 31 during daylight hours.

(2) ~~Grabbing~~(Tickling and noodling) shall be permitted in all waters.

(3) The daily creel limit for ~~grabbing~~(tickling and noodling) shall be fifteen (15) fish, no more than five (5) of which may be catfish.

Section 7. Bow Fishing. (1) A person using archery equipment or a crossbow shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d)~~[(e)]~~ More than two (2) paddlefish daily.

(2) Any paddlefish or catfish shot with archery equipment or a crossbow shall:

(a) Be immediately retained, and not released or culled; and

(b) Shall count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or~~and~~

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 13, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available 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 through September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

(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 eliminate the take of alligator gar by a person using archery equipment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to protect alligator gar from harvest. Alligator gars were extirpated from Kentucky during the early part of the 20th Century. In 2009, the Department began stocking this species in streams in Western Kentucky, where they once existed, to attempt to re-establish the species. Alligator gars are a long lived species and require about eleven (11) years for a female alligator gar to mature. A no harvest regulation on alligator gar is needed to allow the best chance for this re-introduction project to succeed.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who want to bow fish for alligator gar will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: People who want to bow fish for alligator gar will no longer be able to do so, at least until a self-sustaining population develops.

(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 people who want to bow fish for alligator gar.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If a self-sustaining population of alligator gar is achieved as a result of the stockings, bow fishermen will be able to harvest trophy sized alligator gar in the future.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all bow fishermen will need to comply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel

limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(1) A copy of the final approved design plans for impounding structures;

(2) A copy of all correspondence with MSHA;

(3) A copy of technical support documents requested by MSHA;

(4) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining

activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined;

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;[e]

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes~~a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods~~].

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of

liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be

accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as

required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be

substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that

could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of

the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and

transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of

the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;
- (b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (a) The character of bedrock and any adverse geologic conditions in the disposal area;
- (b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

- (1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
- (2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this

subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;
5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and
6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage

conditions.

(e) The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a

complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and

special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the 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: August 5, 2014

FILED WITH LRC: August 6, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 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 September 23, 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 September 30, 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 requirements for the grant of a surface coal mining permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant surface mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for surface mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment is clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is clarifies the agency's position on right of entry for proposed coal mines sites

with severed minerals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The nature of the dispute will ultimately determine the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

(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 Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general 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 request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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.

(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.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for

subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730
2. State Compliance Standards. KRS 350.060(3)(d).
3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will mirror the federal language
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.151, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 et seq., 30 U.S.C. 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a permit for underground coal mining operations. This administrative regulation differs from the corresponding federal regulations as follows:

(1) Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 C.F.R. 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This administrative regulation makes underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended in 1994.

(2) Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of structures for which a presubsidence condition survey is required under 405 KAR 18:210, Section 1(4). The corresponding federal regulation does not require a sample letter. The federal regulations are structured so that these presubsidence surveys must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow the detailed surveys of structures to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures after permit issuance.

(3) Section 26 of this administrative regulation does not include

the requirement at 30 C.F.R. 784.20(a)(3) for detailed surveys of the presubsidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance, and therefore are required under 405 KAR 18:210 rather than this administrative regulation.

(4) Section 26 of this administrative regulation applies to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation is limited to "drinking, domestic, or residential" water supplies. This administrative regulation applies to water supplies protected under KRS 350.421, whereas the federal regulation applies to water supplies protected under 30 U.S.C. 1309a.

(5) Section 32(3)(e) of this administrative regulation requires that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 C.F.R. 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended July 16, 1994. The federal regulation addresses water supplies protected under 30 U.S.C. 1309a, effective October 24, 1992.

(6) Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(a) A copy of the final approved design plans for impounding structures;

(b) A copy of all correspondence with MSHA;

(c) A copy of technical support documents requested by MSHA;

(d) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review.

Section 1. General. (1) Applicability.

(a) This administrative regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this administrative regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin

underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;[or]

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with applicable state law, provided that nothing in this administrative regulation shall be construed to authorize the regulatory authority to adjudicate property rights disputes~~[a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods].~~

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the

cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 C.F.R. Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the

engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells,

springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the

determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the

applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the

National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed

permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall include a map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the cabinet, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures identified in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures identified under this subsection for which a presubsidence survey is required under 405 KAR 18:210 Section 1(4).

(d)1. The application shall include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the application shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

2. If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this paragraph, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with 405 KAR 18:210.

(2) If the information submitted under subsection (1) of this section shows that no structures, or water supplies for domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided under this section.

(3) If the information submitted under subsection (1) of this section shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the cabinet determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings.

(b) A map of the underground workings at a scale of 1:12,000, or larger if determined necessary by the cabinet, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence related damage.

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 405 KAR 18:210, Section 3.

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage including:

1. Backstowing or backfilling of voids;

2. Leaving support pillars of coal;

3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(f) A description of the anticipated effects of planned subsidence, if any.

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and

(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and

Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative

regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080; and

5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and

hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a

geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall

be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Office of Mine Safety and Licensing.

Section 39. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the 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: August 5, 2014

FILED WITH LRC: August 6, 2014 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 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 September 23, 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 September 30, 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 requirements for the grant of a permit for underground coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria to grant an underground mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This administrative regulation establishes the criteria for the issuance of a permit for underground mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for the issuance of an underground permit which is required by KRS 350.060.

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

(a) How the amendment will change this existing administrative

regulation: This amendment clarifies the process by which an entity submits proof of right of entry procedures on proposed coal mines sites with severed minerals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the agency's position on right of entry for proposed coal mines sites with severed minerals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 350.060 authorizes the cabinet to require a permit before coal mining can begin within the Commonwealth. This amendment clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the agency's position on right of entry for proposed coal mines sites with severed minerals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 332 permittees with active permits that this administrative regulation could impact. They would only be impacted if they requested a permit on properties where the private mineral estate is severed from the private surface estate.

(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 simply clarifies an applicant's right to enter a property and mine would be determined by applicable state law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The nature of the dispute will ultimately determine the cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will help a permit applicant better understand the right of entry requirements for permits involving severed mineral estates.

(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 Division of Mine Permits.

(b) On a continuing basis: Future costs would remain essentially unchanged related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general 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 request a permit involving severed minerals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Michael Mullins

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, and 350.060.

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.

(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.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060(3)(d).

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. Part 778.15.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:070. Training: qualifications; application.

RELATES TO: KRS 15.330(1)(c)

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(c) authorizes the Kentucky Law Enforcement Council to prescribe qualifications for attendance at schools certified by the council to conduct those law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund. This administrative regulation prescribes qualifications for attending law enforcement courses at certified schools[and forms to be used] and procedures to be followed in applying for admission to a course[such courses].

Section 1. Admission Qualifications. A certified school, as allowed by law, shall have the authority to decide what persons are qualified to enroll in its courses. [(But)Only a police officer, as defined in KRS 15.420(2), shall gain or retain eligibility to participate in the fund by completing a course at a certified or recognized school.[]]

Section 2. [Application for Basic Training. (1) Each applicant for a basic training course at a school certified by the council must submit a completed KLEC Form 29, "Application for Basic Training," and a completed KLEC Form 30, "Medical Examination Form" to the school no less than thirty (30) days prior to the first day of the course. (These forms are available from the school for example, the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-

3102.) Failure to submit the forms in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement.

(2) Medical examination form requirements. The KLEC Form 30, "Medical Examination Form," shall be completed no sooner than 120 days before the date on which the basic training course begins. The KLEC Form 30, "Medical Examination Form," shall contain the opinion of a licensed physician as to the applicant's ability to participate in the physical activities of basic training as described in the form. No applicant shall be admitted to a basic training course without a completed KLEC Form 30.

Section 3. Application for In-service Training. Each applicant for an in-service training course at a school certified by the council must submit a completed KLEC Form 28, "Application for In-service Training," to the school not less than thirty (30) days prior to the first day of the course. (This form is available from the school for example, the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.) Failure to submit the form in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement and admit an applicant on shorter notice.

Section 4.] Falsification of Application. Knowing or willful falsification of an application to a council-approved course shall be justification for denying admission to the course.

KEITH CAIN, Chair

APPROVED BY AGENCY: August 12, 2014

FILED WITH LRC: August 14, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, 521 Lancaster Avenue, 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 September 30, 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 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 deletes information provided previously that overlaps KLEC and DOCJT mandates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline the KLEC requirements for applications to certified law enforcement schools.

(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): Compliance with this regulation is clearer and geared toward student application and will no longer overlap with specific requirements that certified schools must meet in order to be in compliance with KLEC mandates.

(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 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a), (d)

STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160

NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992. KRS 15.330(1)(d) authorizes the council to issue certificates to a law enforcement training school. This administrative regulation prescribes standards and procedures for approval and certification.

Section 1. Application Procedures. (1) ~~Any~~[A~~n~~] agency, group, or individual may apply to the council to establish:

- (a) A certified basic training school;
- (b) A certified in-service training school; or
- (c) Both.

(2) The application shall:

- (a) Be in writing on a KLEC Form 3, "[]School Certification Application[]"; and
- (b) Include information prescribed by the council regarding the:
 - 1. Curriculum;
 - 2. Instructors;
 - 3. Facilities; and
 - 4. Equipment.

Section 2. Review of Application. (1) Upon receiving a properly completed application for certification of a school, the council shall:

- (a) Conduct an on-site inspection of the facility and equipment; and
- (b) Thoroughly examine the curriculum and instructors of the applying school.

(2) In the course of its inspection, the council shall determine whether the applying school offers training at least equal to the

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equivalent training provided by the department based upon the following criteria:

(a) Staff:

1. Adequate administrative and support[supportive] staffing;
2. Number of full-time instructors;
3. Number of part-time instructors; and
4. Certification of all instructors, including guest instructors;[-]

(b) Curriculum:

1. Type of training to be offered; and
2. Certification of all curricula;[-]

(c) Training aids:

1. Use of an outline, study guide, handouts, and similar class material; and

2. Availability of training aids including:

- a. Chalk or white board;
- b. Flip chart and easel;
- c. Charts;
- d. Enlarged photographs;
- e. Scale models;
- f. Thirty-five (35) millimeter slide projector;
- g. Screen;
- h. Video projector;
- i. Monitors;
- j. Satellite dish capability; and
- k. Distance learning capability; and[-]

(d) Hours and capacity:

1. Number of students that can be trained annually;
2. Number of times annually that a course is offered;
3. Maximum number of students per class; and
4. Hours of operation.

(3) The council shall determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality based upon the following criteria:

(a) Physical facilities:

1. Type and age of buildings;
2. Number of classrooms;
3. Adequate heating, air conditioning, and ventilation;
4. Adequate lighting;
5. Adequate furniture;
6. Available library with adequate number of copies of standard reference material necessary for subject matter taught; and

7. Available physical training facilities; and[-]

(b) Firearms range:

1. Location;
2. Distance from classroom;
3. Travel time from classroom to range;
4. Available transportation to range;
5. Types of courses available (bullseye, silhouette, combat, or other practical shooting course);
6. Range rules posted and enforced;
7. Certified firearms instructor present at all training sessions;
8. Established and enforced safety precautions for loading and storing of ammunition; and
9. Backstop which will contain slugs and prevent ricochets.

(4) An applying school shall not be certified if found to be deficient in any of the above areas established in subsections (2) and (3) of this section.

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. (1) The council shall notify the applying school and fund administrator within thirty (30) days of the council's action whether the school is approved.

(2) If an applying school is approved, the council shall issue a certificate stating:

- (a) That the school has been certified; and
- (b) That the school offers:
 1. Basic training;
 2. In-service training; or
 3. Both.

Section 5. Inspections. A school certified by the council shall be subject to inspection by the council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. (1) A school's certification shall be revoked by the council if a school has been found not to have maintained the standards required for certification. (2) If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council within fifteen (15) days. The council shall not recertify a school until the deficiency has been corrected.

Section 7. Incorporation by Reference. (1) KLEC Form 3 "School Certification Application", June 2014 edition[(~~eff. 8/12/98~~), Kentucky Law Enforcement Council], is incorporated by reference.

(2) This material[(~~It~~)] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, Eastern Kentucky University, 521 Lancaster Avenue[Road], Richmond, Kentucky 40475-3102[(~~40475-3137~~)], Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, 521 Lancaster Avenue, 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 through September 30, 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 standards and procedures for approval and certification of schools which conduct law enforcement training courses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to prescribe standards for the approval and continuation of approval of schools at which required law enforcement training courses shall be conducted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish standards for the approval and continuation of approval of schools at which law enforcement training courses are conducted, which is necessary for the administration of KRS 15.330(1)(a), (d).

(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 application, application review, approval procedures, inspection, and certification revocation of schools which conduct law

enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the application form that law enforcement schools or academies must submit to KLEC in order to be certified. The application form has not been updated since 1998 and is being revised to ensure modern teaching techniques and current requirements are in place.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that agencies in the state are properly organized and ready to operate and teach law enforcement courses in a modern, efficient manner.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish standards for the approval and continuation of approval of schools at which law enforcement training courses are conducted, which is necessary for the administration of KRS 15.330(1)(a), (d).

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear, reasonable and consistent rules and procedures for application and certification of schools which offer law enforcement training courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement schools in the commonwealth (presently there are four (4)).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities should not experience any detrimental impact.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the 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): Law enforcement schools and those they instruct will benefit by requiring schools to conform to modern teaching techniques as well as maintaining established standards.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All law enforcement schools in the commonwealth (presently there are four (4)).

(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)(a), (d), (g), (h) and KRS 15A.160.

(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 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 1:090. Approval of course curriculums.

RELATES TO: KRS 15.330(1)(a)

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for the approval and continuation of approval of schools which conduct law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund, including minimum standards for curriculums for[such] courses. This administrative regulation prescribes standards and procedures for[such] approval of courses.

Section 1. Council Authority. The council shall have the authority to review for certification all curriculums for all law enforcement courses to be provided by all schools[certified by the council]. The council shall have the authority to require all[such] curriculums to indicate, and to justify, the "passing" performance level on all graded exercises in the course.

Section 2. Submission Requirements. All proposed curriculums or proposed amendments to previously approved curriculums shall be received by the council at least thirty (30) days prior to the date of anticipated review. [The curriculum development[approval] form, [-] KLEC Form 31, shall[- is available from, and should] be submitted to_[-] the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, [Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.-]

Section 3. School Endorsement. All course curriculums and amendments to course curriculums submitted by a school shall be endorsed by the director of the school or his designee.

Section 4. Approval Procedure. Upon review of the proposed course curriculum or curriculum amendment, the council shall vote whether to approve, approve subject to stated conditions, or disapprove. Course curriculum approval shall last for only three (3) years; ~~curriculums approved before the effective day of this administrative regulation shall remain approved until three (3) years after the effective date~~. Curriculums which are to be continued shall be resubmitted for approval at least thirty (30) days before the council meeting which occurs last before the expiration of the three (3) year period.

Section 5. Notification of Council Action. Within sixty (60) days of the council's vote, the council shall complete KLEC Form 33 and notify in writing the school which submitted the curriculum whether the curriculum or curriculum amendment was approved.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KLEC Form 31, "Curriculum Development Form", June 2014; and

(b) KLEC Form 33, "Curriculum Development Approval Form", June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. [A copy of all approved curriculum applications (whether originals or renewals), approved curriculum amendment applications (both with attachments), and all approved applications for certification as a school, signed and dated by the executive director of the Kentucky Law Enforcement Council, shall be mailed to the administrator of the Kentucky Law Enforcement Foundation Program Fund].

KEITH CAIN, Chair

APPROVED BY AGENCY: August 13, 2014

FILED WITH LRC: August 14, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, 521 Lancaster Avenue, 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 through September 30, 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 standards and procedures for submission and approval of curriculums from schools which conduct law enforcement training courses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330(1)(a), to prescribe standards for the submission and approval of curriculums at schools that provide law enforcement training courses.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish standards for the submission and approval of curriculums at schools in which law enforcement training courses are conducted, pursuant to KRS 15.330(1)(a).

(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 completion of curriculum approval.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation to conform to current practices and updates the council's mailing address.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure that the information contained in this regulation is relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish standards for submission and approval of approval of curriculums at schools in which law enforcement training courses are conducted, which is necessary for the administration of KRS 15.330(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear, reasonable and consistent rules and procedures for submission and approval of curriculums from schools which conduct law enforcement training 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 schools in the commonwealth that conduct law enforcement training courses for police officers required by KRS 15.440 (presently there are four (4)).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities should not experience any detrimental impact.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the 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): Outdated and repetitive information has been updated to reflect current practices as well as current office location.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

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

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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 schools in the commonwealth that conduct law enforcement training courses for police officers required by KRS 15.440 (presently there are four (4)).

(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)(a), (h) and KRS 15A.160.

(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 entities that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs will 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 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a), (b), (d)

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a), (b), and (d) authorize the Kentucky Law Enforcement Council to certify instructors at certified schools. This administrative regulation prescribes standards and procedures for [such] certification.

Section 1. Council Authority. The council shall have the authority to certify all persons instructing in law enforcement training courses at certified schools.

Section 2. Application for Certification. (1) Applications for certification, additional certification, and for certification renewal shall be made to the council.

(2) ~~{The application for instructor certification form, KLEC Form 1; the application for additional certification, KLEC Form 6; and the application for certification renewal, KLEC Form 5, shall [is available from, and should] be submitted to[.] the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.~~

(3) ~~{}~~ To become certified, an applicant shall ~~[must]~~ meet the following requirements:

(a) ~~{}~~ Have three (3) years of law enforcement experience or experience in the specific field, subject matter or academic

discipline to be taught;

(b) ~~and (2)~~ Have earned a high school diploma or its equivalent as determined by the council; and

(c) ~~(3)~~ Have successfully completed an instructors' course approved by the council.

Section 3. The council may waive any training requirements for instructors who are licensed as professionals, including ~~[but not limited to:]~~ attorneys, physicians, or nurses ~~[, etc.]~~. The council may also waive any training requirements for other experts if provided; however, the reasons for waiver and the individual's qualifications are ~~[shall be]~~ stated in the council's minutes. The application for waiver, KLEC form 8, shall be submitted to the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

Section 4. Application Process. Applications for instructor certification, additional certification, application for waiver, and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the application ~~[applicant]~~.

Section 5. Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section 6. Instructor Certificate. The council shall issue a certificate stating that the person has been approved to instruct.

Section 7. Denial, Revocation, and Reinstatement of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause. Any instructor who fails to instruct during the one (1) year period of certification shall be required to request ~~[apply for]~~ reinstatement of certification in writing ~~[and to meet such requirements as are deemed necessary by the council]~~. When the council denies certification to an applicant or revokes certification or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section 8. Length of Certification. Certification shall be for a period of five (5) years ~~[one (1) year]~~. At the end of the five (5) ~~[one (1)]~~ year period, certification may be renewed by the council if the instructor has instructed for a minimum of five (5) hours in an approved course provided by a certified school during that five (5) year period and if the instructor ~~[if he instructed at a certified school]~~ has been recommended by the director of the certified school. ~~[After five (5) years of continuous certification, the council may certify an instructor for a five (5) year period.]~~

Section 9. Monitoring of Instructors. The council may ~~[shall when practical]~~ monitor each instructor during the first ~~[one (1)]~~ year ~~[period]~~ of certification and biennially thereafter to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section 10. Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published in the form of a notebook, allowing for changes through the use of supplements. The council shall publish annual supplements to the directory by December 31 of each year and the supplements shall include all certification changes, including additions, deletions, and renewals, for the year. The council shall provide each certified school and the fund administrator with a copy of the directory.

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

(a) KLEC Form 1, "Application for Instructor Certification", June

2014:

(b) KLEC Form 5, "Instructor – Continued Certification", June

2014:

(c) KLEC Form 6, "Request for Additional Certification", June

2014; and

(d) KLEC Form 8, "Request for Waiver", June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 14, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 at 9:00 a.m. in Room 211, Funderburk Building, 521 Lancaster Avenue, 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 through September 30, 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 minimum qualifications for instructors at schools at which law enforcement training courses are taught and sets forth the application and renewal process for those instructors to acquire law enforcement instructor certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330(1)(a), (b), and (d), to prescribe qualification standards and certification of law enforcement instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish standards for certified law enforcement instructors, pursuant to KRS 15.330(1)(a), (b) and (d).

(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 those individuals who wish to become certified law enforcement instructors in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for a law enforcement instructor's certification to be valid for five (5) years, instead of the previous one (1) year period, under specific requirements through monitoring. Further, it sets a new requirement for biennial monitoring of instructors after the initial monitoring has been conducted during the first year of certification.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow the

instructor certification process to be a more efficient and streamlined process for instructors and the KLEC, while ensuring quality control.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(h), in accordance with KRS Chapter 13A, authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. This administrative regulation is required to establish minimum qualifications for instructors at schools at which law enforcement training courses are taught and sets forth the application, certification, and certification renewal process in order for instructors to acquire certified law enforcement instructor status, which is necessary for the administration of KRS 15.330(1)(a), (b), and (d).

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets clear, reasonable and consistent rules and procedures for the application and certification process for certified law enforcement instructors in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified law enforcement instructors in Kentucky (presently there are 684).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated instructors will no longer be required to renew their certifications on a yearly basis. Certification shall be for a period of five (5) years with this amendment. Additionally, monitoring of instructors will change from yearly to a total of three (3) times during the new five (5) year certification period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the 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): Certified law enforcement instructors will receive the benefit of being certified to teach police officers in Kentucky for a longer period, thus ending the process of having to go through a yearly application and monitoring process.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All certified law enforcement instructors in the commonwealth (presently there are 684).

(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)(a), (b), (d), and (h); and KRS 15A.160.

(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 the entities 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 1:160. School health services.

RELATES TO: KRS 156.160(1)(g)-(h), (i), (j), 156.501, 156.502, 158.035, 158.160, 161.145, 214.034, 214.036, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(h)]456.160(4)(g)] requires the Kentucky Board of Education to promulgate administrative regulations governing medical inspection, physical and health education and recreation, and other administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. KRS 156.160(1)(i) and (j)]456.160(4)(h) and (i)] require the board to promulgate an administrative regulation governing a required vision examination and a dental screening or examination. This administrative regulation establishes ~~standards and~~ criteria for preventative student health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) Except as provided in subsection (2) of this section, a local board of education shall require a medical examination of each certified or classified employee, including each substitute teacher. The medical examination shall:

(a) Be conducted prior to initial employment; and

(b) Include a tuberculosis (TB) risk assessment.

1. If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST) or a blood test for Mycobacterium tuberculosis (BAMT).

2. The TB risk assessment shall be performed and reported by a physician, an advanced practice registered nurse, a physician's assistant, or a registered nurse.

(2) The medical examination requirement shall not apply to

school bus drivers who are covered by 702 KAR 5:080.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) A medical examination shall be reported on the form Medical Examination of School Employees, KDESHS001, or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form.

(5) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health for further evaluation and treatment of the TB infection.

(6)(a) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent the completed Medical Examination of School Employees form or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form ~~form~~ required by subsection (4) of this section.

(b) The medical examination shall be performed and signed for by a physician, physician's assistant, or an advanced practice registered nurse. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(7) Documentation of a TST, BAMT, and chest x-ray, if performed, shall include:

(a) The date given;

(b) Type of test;

(c) Millimeters of induration;

(d) Date read and by whom; and

(e) Date x-ray taken and results as related to TB status.

(8)(a)1. A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a TB risk assessment and examinations as indicated.

2. The evaluation and any recommended treatment for TB infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health.

(b) An employee exposed to infectious TB shall be tested and, if necessary, treated for TB infection according to the directives of the local board of health.

(c) In a county with an incidence of cases of active TB that is equal to or greater than the national average as established by the Department for Public Health, Division of Epidemiology and Health Planning, Tuberculosis Prevention and Control Program, the local board of health may, with the approval of the Kentucky Department for Public Health, require more extensive testing of school district employees for TB.

Section 2. Preventative Student Health Care Examinations.

(1)(a) A local board of education shall require a preventative health care examination for students within one (1) year prior to initial entry to school.

(b) A second examination shall be required within one (1) year prior to entry into the sixth grade.

(c) A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade.

(2) An out-of-state transfer student shall be required to submit documentation of a preventative health care examination.

(3) A local ~~school~~ board of education may extend the deadline by which to obtain a preventative student health care examination, not to exceed two (2) months.

(4) A preventative student health care examination shall be performed and signed for by a physician, an advanced practice registered nurse, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(5) A preventative student health care examination shall be reported on the Preventative Student Health Care Examination Form, KDESHS002, or an electronic medical record that includes all of the data equivalent to that on the Preventative Student Health

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Care Examination Form, and shall include:

- (a) A medical history;
- (b) An assessment of growth and development and general appearance;
- (c) A physical assessment including hearing and vision screening; and
- (d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.

(6)(a) A vision examination shall be reported on the form, Kentucky Eye Examination Form for School Entry, KDESHS004, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Eye Examination Form for School Entry.

(b) A dental screening or examination shall be reported on the form, Kentucky Dental Screening/Examination Form for School Entry, KDESHS005, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Dental Screening/Examination Form for School Entry.

(7)[A record of immunization shall be submitted on an Immunization Certificate, EPID-230.

(8)] A local school district shall establish a plan for implementation and compliance required for the sixth grade preventative student health care examination.

(8) [(9)] A current Immunization Certificate, EPID-230, incorporated by reference into 902 KAR 2:060, or an immunization certificate meeting the requirements of 902 KAR 2:060, Section 4, shall be on file within two (2) weeks of the child's enrollment in school.

(9) [(40)] (a) A board of education shall adopt a program of continuous health supervision for all currently enrolled students [school enrollees].

(b) Supervision shall include scheduled, appropriate screening tests for vision and hearing.

(10) [(41)] A school shall have emergency care procedures, which shall include:

(a) First aid facilities meeting the requirements of 702 KAR 4:170, including provisions for designated areas for the child to recline;

(b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school who is certified in a standard first aid course which includes CPR for infants and children;

(c) A requirement that, at all times when enrolled students, for whom documentation under KRS 158.838(2) or (7) has been provided to the school, are present during school hours or participating in school-related activities, there is a school employee who is trained to administer and can administer or assist with the self-administration of glucagon, insulin, or seizure rescue medications. A student shall be permitted to conduct the actions and possess the supplies and equipment described in KRS 158.838(7) at school-related activities regardless of whether the student is a participant or mere observer of the school-related activity;

(d) A number at which parents can be reached; and

(e) [(d)] The name of a family physician. [(12) A local board of education shall require immunizations as required by KRS 214.034.]

Section 3. Cumulative Health Records. (1) A school shall initiate a cumulative health record for each student [pupil] entering its school.

(a) The record shall be maintained throughout the student's [pupil's] attendance.

(b) The record shall be uniform and shall be on the form Student's [Pupil's] Cumulative Health Record, KDESHS006, or the record shall be maintained electronically in the student information system.

(c) The record shall include screening tests related to growth and development, vision, hearing, and dental, and findings and recommendations of a physician and a dentist.

(d) A follow-up by the proper health or school authorities shall be made on each abnormality noted, and the result shall be recorded.

(2) A local school district [authority] shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. School District Health Personnel. (1) [Physical Environment. (1) A board of education shall provide and maintain a physical environment that is conducive to the health and safety of school children in each school under its jurisdiction.

(2) A local board of education shall comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety.

(3) A local board of education shall establish and maintain:

(a) An adequate supply of water of safe, potable, sanitary quality;

(b) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste;

(c) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands, and other sanitary fixtures;

(d) Adequate heating, lighting, and ventilation in all school buildings;

(e) Adequate facilities and equipment for cafeterias and lunchrooms;

(f) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment;

(g) Beginning with the 2010-2011 school year, proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the Kentucky Department of Education. This course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400;

(h) Adequate control of air pollutants; and

(i) Universal precautions guidelines compatible with Occupational Safety and Health Administration requirements established in 803 KAR 2:320 and 29 C.F.R. 1910.1030.

Section 5. A superintendent shall designate a person to serve as school health coordinator for the district. [(4)] The person designated shall meet the minimum qualifications required of this position as determined by the Education [Educational] Professional Standards Board in 16 KAR 4:010, Section 12, or by the Kentucky Department of Education in the Local District Classification Plan for Class Code: 7271, as indicated in the document Setting Up Employee Classification Codes].

(2) [Class Title: School Health Coordinator for the district.] The school health coordinator shall work in cooperation with all school personnel, the local board of education, the department [State Department of Education], the local health department, and family resource and youth services centers, [and parents] in [planning,] promoting[,] and implementing a school health services program.

Section 5. Delegation to Perform Medication Administration. (1) A local board of education shall require proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the department or allowed under KRS 158.838(1)(c). The department's course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400 and KRS 156.502.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medical Examination of School Employees", KDESHS001, January 2015 [February 2012];

(b) "Preventative Student Health Care Examination Form", KDESHS002, January 2015 [February 2012];

(c) "Student's [Pupil's] Cumulative Health Record", KDESHS006, January 2015 [March 2012];

(d) ["Setting Up Employee Classification Codes", March 2012];

(e) "Kentucky Eye Examination Form for School Entry", KDESHS004, January 2015 [March 2012]; and

(e) [(f)] "Immunization Certificate", EPID-230, August 2010; and (g) "Kentucky Dental Screening/Examination Form For School Entry", KDESHS005, January 2015 [March 2012].

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of District Support, Department of Education, 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 L. MARCUM, Chairperson

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 29, 2014, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements several statutory provisions dealing with school health and safety. The administrative regulation describes, for both school district employees and students the necessary forms that are to be completed and the data that should be maintained for each individual.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 156.160(1)(h), (i), and (j), 156.501, 156.502, 158.035, 158.160, 161.145, 214.034, 214.036, and 29 C.F.R. 1910.1030 that set forth the state and federal health data requirements dealing with school health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing the process and procedures for implementing the required health data collections by local school districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for establishing the process and procedures for implementing the required health data collections by local school districts.

(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 amendments include the following changes: Changes include updates to language allowing electronic medical records to be submitted to schools, updates to language allowing the acceptance of electronic signatures, and updates language to more clearly define when a school employee must be available to assist with medication administration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement HB 98

passed in the 2014 Regular Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation governs medical examinations necessary and advisable for the protection of physical welfare and safety of public school children and public school employees.

(d) How the amendment will assist in the effective administration of the statutes: The electronic medical records and signatures will streamline health data collection processes used by local public school districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and health care providers who will use the forms incorporated by reference.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The administrative regulation will impact school districts and health care providers by standardizing and streamlining the health data collection process.

(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: Health care providers will continue to provide local school districts with health data utilizing the forms incorporated by reference. While physicians are not 'regulated entities' under this regulation and they use the forms by choice, physicians can also provide the information electronically as long as it has the same information.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The health data collected by local school districts will be in alignment with state and federal requirements and will inform districts about the health conditions and needs of their students.

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

(a) Initially: There will be no additional cost to school districts or the Department of Education other than minimal administrative costs to update referenced documents for recording health data in the student information system.

(b) On a continuing basis: There will be no additional cost to school districts or the Department of Education other than minimal administrative costs and minimal costs associated with required staff training.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal administrative and training costs will be absorbed in the general operating funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(h), (i), and (j), 156.501, 156.502,

158.035, 158.160, 161.145, 214.034, 214.036, and 29 C.F.R. 1910.1030.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs are expected, other than minimal administrative costs and minimal costs associated with required staff training.

(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? Undeterminable minimal costs

(d) How much will it cost to administer this program for subsequent years? Undeterminable minimal 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: No additional costs are expected, other than minimal administrative costs and minimal costs associated with required staff training. Designated unlicensed personnel currently undergo training to administer or assist with administration of medicines. Districts will need to track additional training acquired by staff to administer or assist with administration of glucagon, insulin or seizure rescue medications.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

702 KAR 7:140. School calendar.

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define[defines] the school day and month and require[requires] the Kentucky Board of Education (KBE)[board] to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE[board] to promulgate administrative regulations[for—year-round—school—program calendars,] governing the use of school days, and establishing school calendars. This administrative regulation establishes the requirements for school districts to follow regarding school calendars.

Section 1. Calendar Requirements. (1) The local board of education[, upon recommendation of the local school district superintendent,] shall adopt a school calendar[for the upcoming school year] on or before May 15 of each year. The calendar shall:

(a) ~~Establish the opening and closing dates of the school term;~~

(b) ~~Establish beginning and ending dates of each school month;~~

(c) ~~State the number of days of instruction;~~

(d) ~~Establish the[minimum] length of each student attendance [the instructional] day;~~

(b) ~~Set[(e) State]~~ the instructional time the local board of education requires for kindergarten per KRS 157.320(7) ~~[if—in excess of the minimum three (3) hours of instruction;~~

(f) ~~State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and~~

(g) ~~Designate days on which schools shall be dismissed].~~

(2) Opening day[, for planning activities without the presence of pupils,] shall be scheduled to occur prior to the first student attendance[instructional] day of the student instructional year[school term].

(3) Closing day[, for planning activities without the presence of pupils,] shall be scheduled to occur following the completion of the last student attendance[instructional] day of the student instructional year[school term].

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,062[1050] hour student instructional year[term], the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies may be held before the end[shall be scheduled to occur following completion] of the student instructional year[term]. Diplomas shall be distributed after completion of the student instructional year. ~~(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.]~~

Section 2. Calendar Approval. (1) The local board of education shall file each adopted school calendar with the department[of Education] no later than June 30 of each year. The local school district shall not be paid any installment of its Support Education Excellence in Kentucky (SEEK) program allotment until the school calendar has been approved by the department[of Education].

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the department[of Education] no later than June 30 of each year.

Section 3. Instructional Time Missed. (1) The regularly scheduled student attendance[school] day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the department[of Education] except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall not be required to make up[be allowed] a total of five (5) hours missed each student instructional[school] year[that do not have to be made up, and] that were missed[occurred] as a result of student attendance[school] days shortened due to emergency. These hours shall be reported to the department on the amended school calendar and shall be included in the calculation of total hours of instructional time for the student instructional year.

(3) Except as provided in subsection (2) of this section, all instructional time missed on student attendance[school] days shortened due to emergency shall be made up and shall be reported to the department[of Education] on the amended school calendar.

Section 4. Emergency Day Waiver. (1) A school district shall not be considered for an emergency day waiver[disaster days] unless the district has missed more than twenty (20) regular student attendance[instructional] days district-wide[system-wide]. The local school district shall make up at least the first twenty (20) regular student attendance[instructional] days missed in a school year by adding these equivalent hours back into the school calendar.

(2) A local board of education request for a district-wide emergency day waiver[disaster days] shall be submitted to the commissioner[of Education] for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

(3) ~~[Section 5.]~~ A local board of education may request an emergency day waiver[disaster days] if one (1) school, or part of the district, is forced to miss school on a particular student

attendance day due to an emergency. The request shall be submitted to the commissioner[of Education] for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

Section 5. Activities of the Student Attendance Day.[6-] (1) The following shall constitute the activities to be conducted during the student attendance[instructional-school] day:

(a) Courses and content included in the Kentucky Core Academic Standards["Program of Studies for Kentucky Schools, Grades Primary-12"], pursuant to 704 KAR 3:303;

(b)[Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(e)[(d)] Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(c)[(d)] A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the student attendance[instructional-school] day, as described in subsection (1)(b)[(e)] of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided. An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

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 L. MARCUM, Chairperson

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 29, 2014, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The school calendar administrative regulation establishes the requirements for

opening and closing days of school, instructional days, holidays, professional development days and states the amount of instructional time offered each day. The administrative regulation requires submission of amended school calendars from local boards of education to the agency no later than June 30 of each year.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 158.060 and 158.070 that set forth the requirements for school calendars to be used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for school calendars required in KRS 158.060 and 158.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics regarding how school calendars are to be adopted in local school districts per KRS 158.060 and 158.070 and reported to the agency.

(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 sets the number of student attendance days and designates days when school will not be in session.

(b) The necessity of the amendment to this administrative regulation: Approval of 702 KAR 1:140 will implement the changes to KRS 157.350 and KRS 158.070 passed in the 2014 Regular Session of the Kentucky General Assembly.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes and streamlines the reporting process at the local school district level.

(d) How the amendment will assist in the effective administration of the statutes: This amendment defines the student attendance days to streamline reporting of attendance for funding purposes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Local boards of education are required to adopt a school calendar for the upcoming school year prior to May 15 of each year. Local boards of education must submit each adopted school calendar to the agency electronically no later than June 30 of each year. The school calendar establishes opening and closing days of school, instructional days, holidays, and professional development days and states the amount of instructional time offered each day. Local boards of education may amend the school calendar. Amended school calendars are due to the agency electronically no later than June 30 of each year.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will abide by the requirements set forth. The agency will continue to review data submitted by school districts for compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will continue to submit school calendars that meet statutory requirements.

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

(a) Initially: The amendment does not result in additional costs.

(b) On a continuing basis: The amendment does not result in additional costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No additional funding 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.350 and 158.070.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue 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? None.

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

(c) How much will it cost to administer this program for the first year? The amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Department of Insurance Financial Standards and Examination Division (Amendment)

806 KAR 37:010. Insurance holding company systems.

RELATES TO: KRS 304.06, 304.24-390, 304.24-410, 304.33, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner~~[Executive Director]~~ of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth procedural requirements~~[which the Executive Director of Insurance deems]~~ necessary to carry out the provisions of KRS 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers~~[this information being necessary and appropriate for the public interest and for the protection of policyholders in Kentucky]~~.

Section 1. Definitions.~~[The following definitions apply to this administrative regulation:]~~

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions

corresponding to those performed by the foregoing officers under whatever title.

(4)~~[(2)]~~ "Foreign insurer" shall include an alien insurer except ~~if~~~~[where]~~ clearly noted otherwise.

(5)~~[(3)]~~ "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1)~~(a)~~ Forms A, B, C,~~[and] D, and F shall~~~~[are intended to]~~ specify the information required to be provided in the preparation of the statements required by KRS 304.37-120, 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and acquisitions of domestic insurers referred to in KRS 304.24-390 and 304.24-410. They are not intended to be blank forms which are to be filled in.

(b) ~~Filed~~~~[These]~~ statements~~[filed]~~ shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers~~[thereto]~~ are prepared in a manner as to indicate clearly the scope and coverage of the items.

(c) All instructions, whether appearing under the items of the form or elsewhere~~[therein]~~, shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer~~[thereto]~~ is in the negative, an appropriate statement to that effect shall be made.

(2)(a) Duplicate originals of each statement including exhibits and all other papers and documents filed as a part of the statement~~[thereof]~~, shall be filed with the commissioner~~[executive director]~~ by personal delivery or mail addressed to: Financial Standards and Examination Division, Kentucky Department~~[Office]~~ of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(b) A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form.

(c) The duplicate original shall be manually signed in the manner prescribed on the form.

(d) Unsigned copies shall be conformed.

(e) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners in electronic form.

(4) Statements shall be prepared electronically~~[on paper eight and one-half (8 1/2) inch by eleven (11) inch in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size].~~ All copies of any statement, financial statements, or exhibits shall be~~[clear]~~ easily readable~~[and suitable for review and reproduction]~~~~[photocopying]~~. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries and Omissions. (1)~~(a)~~ Information required by any item of Forms A, B,~~[or] D, E, or F~~ may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Forms A, B,~~[or] D, E, or F~~ ~~if~~~~[provided]~~ the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive.

(c) Documents currently on file with the commissioner~~[executive director]~~ which were filed within three (3) years shall~~[need]~~ not be attached as exhibits. References to

information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in answer to the item.

(d) ~~Material~~[~~Matter~~] shall not be incorporated by reference ~~if~~[~~in any case where~~] the incorporation would render the statement incomplete, unclear, or confusing.

(2)(a) ~~If~~[~~Where~~] an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(b) In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the ~~commissioner~~[~~executive director~~] which was filed within three (3) years and may be qualified in its entirety by the reference.

(c) In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties[~~thereto~~], the dates of execution, or other details, a copy of only one (1) of ~~the~~[~~such~~] documents ~~shall~~[~~need~~] be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the filed documents[~~a copy of which is filed~~].

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish. (1)[~~Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:~~

(a) ~~The person filing shall give the information on the subject it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and~~

(b) ~~The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.~~

(2) ~~If it is impractical to furnish any required information, document, or report when[at the time] it is required to be filed, there shall[may] be filed with the commissioner[executive director] as a separate document:~~

(a) Identifying the information, document, or report in question;

(b) Stating why its filing ~~when[at the time]~~ required is impractical; and

(c) Requesting an extension of time for filing the information, document, or report to a specified date.

(2) The request for extension shall be[~~deemed~~] granted unless the ~~commissioner~~[~~executive director~~] within sixty (60) days after receipt[~~thereof~~] enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information expressly required to be included in Forms A, B, C,[~~and~~] D, E, and F, the commissioner may request further material information, if any as may be necessary to make the information contained in the filing not misleading[~~there shall be added any further material information necessary to make the information contained therein not misleading~~].

(2) The person filing may also file[~~such~~] exhibits[~~as it may desire~~] in addition to those expressly required by the statement. These exhibits shall[~~be so marked as to indicate~~] clearly indicate the subject matters to which they refer.

(3) Changes to Forms A, B, C,[~~or~~] D, E, or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under KRS 304.37-110 shall be[~~is~~] in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code, KRS Chapter 304, and corresponding administrative regulations.

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-390, 304.24-410, or 304.37-120[~~;~~] shall furnish the required information on Form A, and on Form E, in accordance with Section 10 of this administrative regulation.

Section 8. Amendments to Form A. The applicant shall promptly advise the ~~commissioner~~[~~executive director~~] of any changes in the information[~~so~~] furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the ~~commissioner's~~[~~executive director's~~] disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is[~~deemed to be~~] a "domestic insurer" solely because of the provisions of KRS 304.37-010[~~304.37-110~~], the name of the domestic insurer on the cover page shall be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) ~~If~~[~~Where~~] an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120, that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in the Commonwealth is proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the acquisition meets the requirements of KRS 304.37-130(2)(b).

(3) In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

Section 11. Annual Registration of Insurers - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

Section ~~12~~[~~14~~]. Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section ~~13~~[~~12~~]. Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304.37 regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer shall be[~~is~~] the principal insurance company in the insurance holding company system shall be[~~is~~] a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the ~~commissioner~~[~~executive director~~], an unauthorized insurer may follow any of the procedures which ~~may~~[~~could~~] be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner~~[executive director]~~. However, the commissioner ~~may~~~~[executive director reserves the right to]~~ require individual filings if consolidation renders the material incomplete, unclear, or confusing~~[he deems them necessary in the interest of clarity, ease of administration, or the public good]~~.

Section 14.~~[43-]~~ Disclaimers and Termination of Registration.

(1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person, referred to as the subject~~[(the "subject")]~~ shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares concerning which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person;

(d) A statement explaining why the person shall~~[should]~~ not be considered to control the subject.

(2) A request for termination of registration shall be~~deemed to have been~~ granted unless the commissioner~~[executive director]~~, within thirty (30) days after he receives the request, notifies the registrant otherwise.

Section 15.~~[44-]~~ Transactions Subject to Prior Notice - Notice Filing. (1) An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) Identify the person providing services and the nature of the services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement, not less frequently than on a quarterly basis, and compliance with KRS 304 Subtitle 6;

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under KRS 304.33:

1. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

2. All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to KRS 304.33; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a

seizure by the commissioner under KRS 304.33, and will make them available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to KRS 304.37-020(13) shall furnish the required information on Form F.

Section 17.~~[45-]~~ Extraordinary Dividends and Other Distributions. (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property~~[thereof]~~, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions, ~~[(including regular dividends but excluding distributions of the insurers own securities,)]~~ paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

2. Surplus as regards policyholders, ~~[(total capital and surplus,)]~~ as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner~~[executive director]~~ and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner~~[executive director]~~ all dividends and other distributions to shareholders within fifteen (15) business days following the declaration ~~[thereof]~~, including the same information required by subsection (1)(d) of this section.

Section 18.~~[46-]~~ Adequacy of Surplus. (1)~~[The factors set forth in KRS 304.37-030(4) are not intended to be an exhaustive list.]~~ In determining the adequacy and reasonableness of an insurer's surplus no single factor shall be~~[is necessarily]~~ controlling. The commissioner~~[executive director]~~ shall consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(2) In comparing the surplus maintained by other insurers, the commissioner~~[executive director]~~ shall consider the extent to which each of these factors varies from insurer to insurer and in determining the quality and liquidity of investments in subsidiaries, the commissioner~~[executive director]~~ shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Section 19. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form A Statement Regarding the Acquisition of Control of

or Merger With a Domestic Insurer," August 2014;

(b) "Form B Insurance Holding Company System Annual Registration Statement," August 2014;

(c) "Form C Summary of Changes to Registration Statement," August 2014;

(d) "Form D Prior Notice of a Transaction," August 2014;

(e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer," August 2014; and

(f) "Form F Enterprise Risk Report," August 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, <http://insurance.ky.gov>. [APPENDIX A

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

Name of Domestic Insurer:

BY

Name of Acquiring Person (Applicant):

Filed with the Kentucky Office of Insurance

State of domicile of insurer being acquired:

Dated: _____, 19____

Name, Title, address, and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Shall be Addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five (5) years or for any lesser period as the person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(3) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in the chart or listing the percentage of voting securities of each person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State the following with respect to the applicant if he is an individual or all persons who are directors, executive officers, or owners of ten (10) percent or more of the voting securities of the applicant if the applicant is not an individual.

(1) Name and business address;

(2) Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other

organization in which such employment is carried on;

(3) Material occupations, positions, offices, or employment during the last five (5) years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each occupation, position, office, or employment was carried on; if any occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate this fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.

(4) Whether or not the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) and, if so, give the date, nature of conviction, name, and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

(1) Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship (if any) between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

(2) Explain the criteria used in determining the nature and amount of such consideration.

(3) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was determined.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the

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twelve (12) calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.

(2) The financial statements shall include the annual financial statements of the persons identified in Item 2(3) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of the person's last fiscal year, if the information is available. Statements may be prepared on either an individual basis, or, unless the executive director otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(3) The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance regulatory official of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and administrative regulations of the state.

(4) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer, and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two (2) fiscal years, and any additional documents or papers required by Form A or Sections 2 and 4 of this administrative regulation.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.24-390, 304.24-410, or 199 and KRS 304.37-120, as applicable, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of ____, 19 ____.

(SEAL)

Name of Applicant:

BY

(Name), (Title):

Attest:

Signature of Officer:

Title:

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached application dated ____, 19 ____, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

Signature:

(Type or print name beneath)

APPENDIX B

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Kentucky Office of Insurance

BY

Name of Registrant:

On Behalf of Following Insurance Companies

Name:

Address:

Date: ____, 19 ____

Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered ("the registrant"), the home office address and principal executive offices of each, the date on which each registrant became part of the insurance holding company system, and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding \$1,000,000.00. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

(1) Name;

(2) Home office address;

(3) Principal executive office address;

(4) The organizational structure of the person (i.e., corporation, partnership, individual, trust, etc.);

(5) The principal business of the person;

(6) The name and address of any person who holds or owns ten (10) percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(7) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

(1) Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;

- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
- (e) All management agreements, service contracts, and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(2) No information need be disclosed if it is not material for purposes of KRS 304.37-020.

(3) Sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one (0.5) percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

(4) The description shall be in a manner as to permit the proper evaluation thereof by the executive director, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any persons is or was the subject. Give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company such as bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.

(2) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent the information is available. The financial statements may be prepared on either an individual basis, or unless the executive director otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(4) Unless the executive director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified,

provided they are based on the annual statement of the insurer filed with the insurance regulatory official of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and administrative regulations of such state.

(5) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person, and any additional documents or papers required by Form B or Sections 2 and 4 of this administrative regulation.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Registration Statement, shall be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of ____, 19 ____.

(SEAL) _____

____ Name of Applicant

BY _____

____ (Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached annual registration statement dated ____, 19 ____, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

Signature:

Type or print name beneath:

APPENDIX C

FORM C

SUMMARY OF REGISTRATION STATEMENT

Filed with the Kentucky Office of Insurance

By

Name of Registrant:

On Behalf of Following Insurance Companies

Name:

Address:

Date: ____, 19 ____

Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the executive director, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B, insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where the changes are ones which result in ownership or holdings of ten (10) percent or more of voting securities, loss or transfer of control, or

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acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person, a director or executive officer terminates his responsibilities with the ultimate controlling person, or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion, and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19____.

(SEAL)

Name of Applicant:
BY _____

(Name), (Title):

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached summary of registration statement dated _____, 19____, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

Signature:
Type or print name beneath:

**APPENDIX D
FORM D
PRIOR NOTICE OF A TRANSACTION**

Filed with the Kentucky Office of Insurance
By _____

Name of Registrant:

On Behalf of Following Insurance Companies

Name:
Address:

Date: _____, 19____
Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement

Shall Be Addressed:

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

- (1) Name;
- (2) Home office address;
- (3) Principal executive office address;
- (4) The organizational structure (i.e., corporation, partnership, individual, trust, etc.);
- (5) A description of the nature of the parties' business operations;
- (6) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and
- (7) Where the transaction is with a nonaffiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

- (1) A statement as to whether notice is being given under KRS 304.37-030(2)(a)1, 2, 3, 4, or 5;
- (2) A statement of the nature of the transaction; and
- (3) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual or deferral of interest.

(3) If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(4) No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than:

(a) In the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders; or

(b) In the case of life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

(1) If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to,

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purchase assets of, or make investments in any affiliate. Describe the amount and source of funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(2) No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders or, with respect to life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

(1) If the transaction is a reinsurance agreement or modification thereto, as described by KRS 304.37-030(2)(a)3, furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one (1) or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(2) No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than five (5) percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.

(1) For management and service agreements, furnish:

(a) A brief description of the managerial responsibilities, or services to be performed; and

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(2) For cost-sharing arrangements, furnish:

(a) A brief description of the purpose of the agreement;

(b) A description of the period of time during which the agreement is to be in effect;

(c) A brief description of each party's expenses or costs covered by the agreement; and

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-030, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of ____, 19 ____.

(SEAL)

Name of Applicant:

BY:

(Name), (Title):

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached notice dated _____, 19 ____, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further

says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

Signature:

Type or print name beneath:]

SHARON P. CLARK, Commissioner

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 11, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2014, at 9:00 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 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 through September 30, 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: DJ Wasson, Administrative Coordinator, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-088, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS Chapter 304, Subtitle 37, requires insurers that are members of holding company systems to register with the commissioner to provide notice of transactions that are material to the financial condition of the insurer. This administrative regulation establishes the information that must be submitted in filings with the department including mergers and acquisitions, material transactions, a summary of registration statement, and prior notice of a transaction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance for insurance holding company systems to comply with KRS Chapter 304, Subtitle 37. This administrative regulation is also needed to meet the financial accreditation standards established by the National Association of Insurance Commissioners (NAIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth procedural requirements to carry out the provisions of KRS 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for making the statutorily required filings with the commissioner.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add two new reports: (1) Form E, Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer, and (2) Form F, Enterprise Risk Report. This amendment will also adopt the updates to the national model that are required

for financial accreditation beginning January 1, 2015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform this administrative regulation to 12 RS HB 295, and the updated requirements for financial accreditation.

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

KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth procedural requirements to carry out the provisions of KRS 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets forth the process for insurers to file information regarding the potential competitive impact of a proposed merger or acquisition and enterprise risk reports with the commissioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately thirty-seven (37) regulated entities will be impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities that are required to file a pre-acquisition notification report or an enterprise risk report will need to comply with the requirements and report format outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities have been complying with these requirements for numerous years. The current fee is five (5) dollars per filing. This fee will apply to the new Form E and Form F filings.

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

(c) As a result of compliance, regulated entities will be able to submit the appropriate statutory filings required by KRS 304, Subtitle 37, and receive approval of specific material transactions.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially. The Department has existing staff to perform this function.

(b) On a continuing basis: There will not be a cost to implement this administrative regulation on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees. This administrative regulation does establish two new forms that regulated entities need to file with the Department of Insurance for provide pre-acquisition notification and identification of enterprise risks. There is an existing fee of five (5) dollars per filing related to these forms. Any increase in fees received by the Department of Insurance is anticipated to be minimal.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation apply to all entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance 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 304.2-110, 304.24-390, 304.24-410, KRS 304.33, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation establishes two new forms that regulated entities need to file with the Department of Insurance for provide pre-acquisition notification and identification of enterprise risks. There is an existing fee of five (5) dollars per filing related to these forms. Any revenue generated by this administrative regulation is anticipated to be minimal in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Any revenue generated by this administrative regulation is anticipated to be minimal in subsequent years.

(c) How much will it cost to administer this program for the first year? This regulation will be revenue neutral. There will not be an additional cost to administer this program in the first year. Existing staff at the Department of Insurance currently perform this function.

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation establishes two new forms that regulated entities need to file with the Department of Insurance for provide pre-acquisition notification and identification of enterprise risks. There is an existing fee of five (5) dollars per filing related to these forms. Approximately thirty-seven (37) entities are subject to the requirements in this administrative regulation.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 1:017. Objections and complaints.

RELATES TO: KRS 230.210-230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the requirements and procedures in lodging of objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. Objections or complaints against a horse or jockey entered in a race shall be received only when duly lodged by the owner or authorized agent of the owner, the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may suffer by the alleged violation of an administrative regulation. An inquiry may also be made by a racing official.

Section 2. Form for Objections and Complaints. Objections as to interference or fouls occurring during the running of the race shall be lodged with the stewards orally or by telephone. All other

objections or complaints shall be made in writing and bear the signature of the complainant. Objections or complaints lodged during a race meeting shall be addressed to the stewards. Objections or complaints lodged after the termination of a race meeting shall be addressed to the ~~commission~~[authority secretary] at the ~~commission's~~[authority] general office. An objection or complaint once lodged shall not be withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. Objections or complaints based on the following violations of administrative ~~regulations~~[regulation] shall be lodged by persons aggrieved thereby within the time prescribed; except the stewards may declare a horse ineligible or disqualified at any time:

(1) At least one (1) hour before post time of the race, if objection is based on incorrect weight allowance claimed for a horse entered to race;[-]

(2) Before the race has been posted as official on the infield ~~results~~[result] board, if objection is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race;[-]

(3) Not later than one (1) year ~~from the date~~[after] the race was run, if the objection or complaint is based on fraudulent or willful misstatement in an entry under which a horse has run;[-]

(4) Not later than forty-eight (48) hours~~, exclusive of Sunday,~~ after post time of the race, ~~for the race was run, if~~ objections or complaints involving the claim of a horse or violation of 810 KAR 1:012, Section 4~~are based on any other violation of an administrative regulation.~~

(5) Within one (1) week after post time of the race, if objections or complaints are based on any other violation of an administrative regulation.

Section 4. Final Determination of Objections to Acts in Race. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification, if any, of horses in a race for a foul committed during the race. Findings of fact and determination shall be final and no appeal may be taken thereon. In determining the extent of disqualification, the stewards in their discretion may:

(1) Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that~~as-~~may have suffered by reason of the foul;

(2) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(3) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(4) Declare void[-] a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(5) Affirm the placing[place] judges' order of finish and suspend ~~the~~[a] jockey, if in the stewards' opinion the foul riding had no effect[affect] on the order of finish;

(6) Disqualify the offending horse and not suspend the jockey, if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged violation of an administrative regulation, after the race has been declared official for pari-mutuel payoff, then pending final determination of the disputed race:

(1) The purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except, any portion of the purse money whose distribution would not be affected by the determination of the dispute, at the discretion of the stewards, may be distributed.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged violation of an administrative regulation which places the outcome of a race in dispute, the money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding same.

(3) The horse ~~that~~[which] crossed the finish line first and any other horse that may become the winner of a disputed race shall be considered winners~~for which the race is claimed, shall be liable for all penalties attaching to the winner~~ of that race until the matter is~~if~~ finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine all objections, complaints, or alleged violations of administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling thereon. If the stewards find that an administrative regulation was violated, the stewards may penalize the persons responsible, disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If a horse is disqualified after a race has been declared official for pari-mutuel payoff and thereby causes revision of the order of finish in the race:

(1) The pari-mutuel payoff shall in no way be affected.

(2) The stewards shall be responsible for causing appropriate corrections to be made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting such corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. All complaints or protests by any licensee based on any decision or act of a racing official other than the stewards, or concerning any matter as may occur on association grounds not provided for by Sections 4 and 5 of this administrative regulation shall be made in writing, signed by the complainant, and submitted to the stewards. All complaints or protests by any persons based on any decision, act, or conduct of the stewards shall be submitted to the commission[authority], as provided by 810 KAR 1:029[1:020].

ROBERT M. BECK, JR., Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 18, 2014, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation provides requirements and procedures for filing complaints or objections of violations of 810 KAR Chapter 1.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements, procedures, and deadlines for filing objections or complaints of alleged violations of 810 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 grants the commission the authority to regulation conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides owners, trainers, jockeys, and registered agents the means by which to assist in the enforcement of the administrative regulations by providing procedures by which they may provide the commission with notification of alleged violations.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the time in which an objection involving the claim of a horse must be filed. The regulation currently provides that such an objection shall be filed "not later than forty-eight (48) hours, exclusive of Sunday, after the race was run." The amendment changes the deadline to within forty-eight (48) hours of post time. The amendment also provides a catch-all deadline for any violations of 810 KAR Chapter 1 not specifically enumerated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the original deadline is outdated. Kentucky conducts horse racing on Sundays and so there is no reason to exclude that day from the filing time. Additionally, the current provision is unclear as to when the forty-eight (48) hours actually ends as there is no specific time assigned to "after the race was run."

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides clarity and specificity for the filing of complaints so that the commission can effectively supervise and regulate horse race meetings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, jockeys, owners, and trainers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit through clarity and specificity regarding the filing deadlines for various objections and complaints.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in 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? 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:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of thoroughbred horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry,

subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 810 KAR 1:007[Chapter 4].

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate, racing permit, or entry in a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 810 KAR 1:012 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 1:028 for incorrect identification.

~~(5) A horse that bleeds shall be registered with the commission veterinarian prior to entry pursuant to 810 KAR Chapter 4.~~

~~(6) The racing program shall indicate usage of furosemide pursuant to 810 KAR 1:018[or an adjunct bleeder medication].~~

~~(6) [(7)] An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.~~

~~(7) [(8)] A horse shall not be entered in two (2) races to be run on the same day.~~

~~(8) (a) [(9) (a)] A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.~~

~~(b) A horse starting for the first time shall not be permitted to start unless it has three (3) [published] workouts, one (1) of which is from the starting gate, [and] one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.~~

~~(c) A workout not appearing in the racing publication [If a horse has performed the requisite workout, but the workout does not appear in the past performances through no fault of the trainer, the horse shall be permitted to start. The correct workout] shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel[mutual] windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.~~

~~(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.~~

~~(9) [(40)] If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.~~

Section 4. Limitation as to Spouses. (1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except

as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) More than two (2) horses having common ties through training shall not be~~be~~ entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutuel~~[mutual]~~ entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel~~[mutual]~~ entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse a preference for one (1) of the horses shall be made.

(4) (a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any thoroughbred stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutuel~~[mutual]~~ entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the~~[a]~~ stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed~~[or otherwise unqualified to race or enter]~~, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number

of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the following conditions:

(a) Horses originally joined as a mutuel[mutual] entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split;

(b) Division of entries in any split stakes race may be made according to age, sex, or both; and

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

~~(2) Post positions in split races shall be redetermined by lot. Owners, trainers, and their representatives shall have the opportunity to be present at the redetermination.~~

(3) The racing secretary shall assign program[pari-mutuel] numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race[~~as a starter~~] on the[a] succeeding race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes and handicaps.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List. (1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. (1) Scratches shall be irrevocable and shall be permitted under the following conditions:

~~[(1)]~~ (a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four hours prior to post time for the race by obtaining ~~written~~ approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

~~[(2)]~~ A horse shall not be scratched from a purse race unless:

~~[(a)]~~ The approval of the stewards has been obtained; and

~~[(b)]~~ Intention to scratch has been filed in writing with the racing secretary or his assistant at or before scratch time.

~~[(2)]~~ ~~the time conspicuously posted as "scratch time."~~

~~[(3)]~~ A scratch of one (1) horse coupled in a mutuel[mutual] entry in a purse race shall be made at or before ~~the posted~~ scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

~~[(3)]~~ ~~[(4)]~~ In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8)~~ten (10)]~~ betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of eight (8)~~ten (10)]~~ betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish~~wishes~~ to scratch their horses.

~~[(4)]~~ ~~[(5)]~~ A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

~~[(5)]~~ ~~[(6)]~~ Each ~~licensed racing~~ association ~~offering thoroughbred racing~~ shall keep records and statistics documenting the effect

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upon field sizes of the six (6) day veterinarian list requirement in subsection (4)(5) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form~~[-Racing Times]~~ or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign ~~country~~~~[country]~~, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

ROBERT M. BECK, JR., Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 18, 2014, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry, subscription and declaration of thoroughbred horses in order to race.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements for entering a horse in a race in Kentucky, including outlining the procedures for scratches and drawing of post positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures for entering a thoroughbred horse to race in Kentucky, including procedures for scratches and drawing of post positions.

(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 make minor revisions to reflect actual race track practice, clarify regulatory requirements, and modify some procedures concerning entries of horses.

(b) The necessity of the amendment to this administrative regulation: The amendments are consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are consistent with actual practice on the race track and with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, owners and trainers are affected by this administrative regulation. The amendments, however, reflect actual practice on the race track.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Makes the regulation consistent with actual practice and provides more entry options for horses in stakes and handicaps.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in 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? 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:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 2:070. Entries, subscriptions and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320[230.610-230.770]

STATUTORY AUTHORITY: KRS 230.215, 230.260[43A.040-et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which Quarter Horse, Appaloosa, and Arabian racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of Quarter Horse, Appaloosa, and Arabian horses[To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this administrative regulation is to outline requirements for entry, subscription and declaration of horses] in order to race.

Section 1. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 811 KAR 2:040.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, a horse shall be designated by name, age, color, sex, sire, and dam, as reflected by its registration certificate, racing permit, or entry in a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

(a) A horse shall not race unless registered pursuant to 811 KAR 2:065 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 811 KAR 2:100 for incorrect identification.

(6) The racing program shall indicate usage of furosemide pursuant to 811 KAR 2:096.

(7) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(8) A horse shall not be entered in two (2) races to be run on the same day.

(9)(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(c) A workout not appearing in the racing publication shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutual windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

Section 4. Limitation as to Spouses. An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries. (1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse shall be joined as a mutuel entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any Quarter Horse, Appaloosa, or Arabian stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutuel entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions. (1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse, or a mistake in its entry when the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If the stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after the closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries which have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split;

(b) Division of entries in any split stakes race may be made according to age, sex, or both; and

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions. (1) Post positions for all races shall

be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also Eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on the succeeding race day shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes and handicaps.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List. (1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations. (1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches. (1) Scratches shall be irrevocable and shall be permitted only under the conditions established in this section.

(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or
2. The scratch is related to adverse track conditions or change

of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and

2. Intention to scratch has been filed in writing with the racing secretary or his assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission veterinarian's list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances, and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race[Entering Required. No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given therefor.

Section 2. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be lodged with the racing secretary and shall not be considered as having been made until received by the racing secretary who shall maintain a record of time of receipt of same.

(2) Every entry must be in the name of such horse's licensed owner, as completely disclosed and registered with the racing secretary under these rules, and made by the owner, or trainer, or a person deputized by such owner or trainer, and signed by the person responsible for the entry.

(3) Every entry must be in writing, or by telegraph promptly confirmed in writing; except that an entry may be made by telephone to the racing secretary, but must be confirmed promptly in writing should the stewards, the racing secretary, or an assistant to the racing secretary so request.

(4) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, dam, and broodmare sire, as reflected by such horse's registration certification.

(a) No horse may race unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) In establishing identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

(5) No alteration may be made in any entry after the closing of entries, but an error may be corrected.

(6) No horse may be entered in two (2) races to be run on the same day.

(7) First time starters and horses without a past performance record at a pari-mutuel race track must complete two (2) official timed workouts, one (1) from the gate, and be approved to start by the stewards and starter before entering any race. Horses entered to race around a turn must have officially started in a race around a

turn or will be required to have an official work around the turn where they are racing and must be approved by the stewards.

Section 3. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where such race is to be run, unless its stabling elsewhere has been approved by the racing secretary as provided by 811 KAR 2:035.

Section 4. Limitation as to Spouses. An entry in any race may not be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that if the license of a jockey has been suspended for a routine riding offense, then the stewards may waive this rule as to the duly licensed husband or wife of such suspended jockey.

Section 5. Mutuel Entries. (1) All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest except that in order to make up to eight (8) separate betting interests, the horses may be allowed to run as separate betting interests where a trainer enters more than one (1) horse, each having bona fide separate owners, at the discretion of the stewards. All horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(2) No more than two (2) horses having common ties through ownership or training as to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one (1) of the horses must be made.

(3) In no case may two (2) horses having common ties through ownership start in a race to the exclusion of a single interest. In races in which the number of starters if limited to ten (10) or less, no two (2) horses having common ties through training may start to the exclusion of a single entry.

Section 6. Subscriptions. (1) Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due thereon.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded, "except as otherwise stated in the conditions of a stake race."

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) When a horse is sold privately, or sold at public auction, or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new owner; except that, if such horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter such horse, then such subscriptions shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for such races. (If a race is not split, no entry, subscription, or declaration shall be accepted after such closing time; except that in event of an emergency, or if a purse race fails to fill then the racing secretary may, with the approval of the steward, extend such closing time.

(2) If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing; provided, they are received in time for compliance with every other condition of such race.

(3) Entries which have closed shall be compiled without delay

by the racing secretary along with declarations, be posted:

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate approved by the commission as can be positioned across the width of the track at the starting point for such race; and such maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, can be afforded a fair and equal start.

(2) Any claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered must be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered must be run.

(3) If any purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section to be run, then the association may cancel or declare off such race. The names of all horses entered therein shall be publicly posted in the office of the racing secretary not later than 4 p.m. the same day.

Section 9. Split or Divided Races. (1) In the event a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice thereof not less than fifteen (15) minutes before such races are closed so as to grant time for the making of additional entries to such split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made, and in the absence of specific prohibition by such conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making such multiple entry, at the time of such entry, indicates such coupling of horses is not to be uncoupled when such race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided above by this rule, shall be divided by lot so as to provide a number of betting interests as near equal as possible for each division of such split race.

Section 10. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also Eligible List. (1) If the number of entries for a purse race exceed the number of horses permitted to start in such race as provided by Section 8 of this administrative regulation, then the names of as many as eight (8) horses entered but not drawn into such race as starters shall be posted on the entry sheet as "also eligible" to start.

(2) After any horses have been excused from a purse race at scratch time, the starting and post position of the also-eligible list shall be determined by the best preference date. Horses having equal preference dates shall be drawn by lot.

(3) Any owner or trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the racing secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

(4) Where entries are closed two (2) racing days prior to the running of a race, any horse on an also-eligible list, and which also has been drawn into a race as a starter for the succeeding day,

shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination, and as to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

(2) No preference shall be given a horse otherwise entitled thereto for a race if such horse also is entered for a race on the succeeding day.

(3) No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred."

Section 13. Arrears. No horse may be entered or raced if the owner thereof is in arrears as to any stakes fees due by such owner, except with the approval of the racing secretary.

Section 14. Declaration. Withdrawal of a horse from a race before closing thereof by the owner or trainer or person deputized by either, such being known as a "declaration," shall be made in the same manner as to form, time, and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any licensed association.

Section 15. Scratches. Withdrawal of a horse from a race after closing thereof by the owner or trainer or person deputized by either, such being known as a "scratch," shall be permitted only under the following conditions:

(1) A horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the racing preceding such stakes race by the filing in writing of such intention with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(2) No horse may be scratched from a purse race without approval of the stewards and unless such intention to scratch has been filed in writing with the racing secretary or his assistant at or before the time conspicuously posted as "scratch time." Scratch of one (1) horse coupled in a mutual entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than ten (10) betting interests in either of the two (2) daily double races, or horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum number for such races, this privilege to be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after such horse was scratched or excused].

ROBERT M. BECK, JR., Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in

writing by September 18, 2014, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entry, subscription and declaration of Quarter Horses, Arabians, and Appaloosas in order to race.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements for entering a horse in a race in Kentucky, including outlining the procedures for scratches and drawing of post positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260 grants the commission the authority to regulate conditions under which Quarter Horses, Arabians, and Appaloosa racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes procedures for entering a Quarter Horses, Arabians, or Appaloosa to race in Kentucky, including procedures for scratches and drawing of post positions.

(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 make minor revisions to reflect actual race track practice, clarify regulatory requirements, and modify some procedures concerning entries of horses. The amendment also ensures that this regulation is consistent with the associated thoroughbred regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are consistent with actual practice. The procedures for entries, subscriptions, and declarations of Quarter Horses, Arabians, and Appaloosa should be identical to the procedures for thoroughbreds. 811 KAR 2:070 had not been updated since 1988 and so these amendments are necessary to ensure consistency between the regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are consistent with actual practice on the race track and with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, owners and trainers are affected by this administrative regulation. The amendments, however, reflect actual practice on the race track.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Makes the regulation consistent with actual practice and provides more entry options for horses in stakes and handicaps.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215 and 230.260.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in 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? 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:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 2:090. Objections and complaints.

RELATES TO: KRS 230.210-230.360[230.610-230.770]

STATUTORY AUTHORITY: KRS 230.260[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which Arabian, Quarter Horse, and Appaloosa racing shall be conducted in Kentucky. The function of this administrative regulation relates to the requirements and procedures in lodging of objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. Objections or complaints against a horse or jockey entered in a race shall be received only when duly lodged by the owner or authorized agent of the owner, or the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may[~~could~~] suffer by the alleged[~~rule~~] violation of an administrative regulation. An inquiry may also[~~can~~] be made by a racing official.

Section 2. Form for Objections and Complaints. Objections as to interference or fouls occurring during the running of the race shall[~~may~~] be lodged with the stewards orally or by the telephone. [~~by the trainer or jockey with the clerk of scales or with the stewards;~~] All other objections or complaints shall be made in writing and bear the signature of the complainant. Objections or complaints lodged during a race meeting shall be addressed to the stewards. Objections or complaints lodged after the termination of a race meeting shall be addressed to the commission[~~secretary~~] at the commission's[~~commission~~] general office. An objection or complaint once lodged shall not[~~cannot~~] be withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. Objections or complaints based on the following[~~rule~~] violations of administrative regulations shall[~~must~~] be lodged by persons aggrieved thereby within the time prescribed[~~therefor~~]; except[~~that~~] the stewards may declare a horse ineligible or disqualified at any time:

(1) At least one (1) hour before post time of the race, if objection is based on incorrect weight allowance claimed for a horse entered to race[~~;~~]

(2) Before the race has been posted as official on the infield results[~~result~~] board, if objection is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race[~~;~~]

(3) Not later than one (1) year from the date[~~after~~] the race was run, if the objection or complaint is based on fraudulent or willful misstatement in an entry under which a horse has run[~~;~~]

(4) Not later than forty-eight (48) hours[~~exclusive of Sunday~~], after post time of the race for[~~was run if~~] objections or complaints involving the claim of a horse or violation of 811 KAR 2:065, Section 3[~~are based on any other rule violation~~].

(5) Within one (1) week after post time of the race, if objections or complaints are based on any other violation of an administrative regulation.

Section 4. Final Determination of Objections to Acts in Race. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification[~~qualifications~~], if any, of horses in a race for a foul committed during the[~~such~~] race.[~~Such~~] Findings—of fact and determinations shall be final and no appeal may be taken thereon. In determining the extent of disqualification, the stewards in their discretion may:

(1) Disqualify and place the offending horse, and any horses

coupled with it as an entry, behind[~~such~~] horses that[~~as~~] may have suffered by reason of the foul;

(2) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(3) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(4) Declare[~~null and~~] void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(5) Affirm the placing judges' order of finish and suspend the[~~a~~] jockey, if in the stewards' opinion the foul riding had no effect on[~~did not affect~~] the order of finish;

(6) Disqualify the offending horse and not suspend the[~~a~~] jockey, if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the[~~a~~] jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. ~~If in the event~~ the result of a race is placed in dispute by the lodging of an objection or complaint[~~;~~] or by discovery of an alleged[~~rule~~] violation of an administrative regulation, after the[~~such~~] race has been declared official for pari-mutuel payoff[~~for example, discovery of a finger or otherwise ineligible starter, or violation of the medication rule~~], then pending final determination of such disputed race:

(1) The purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except[~~provided, however~~], any portion of the purse money whose distribution would not be affected by the determination of such dispute, at the discretion of the stewards, may be distributed.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged[~~rule~~] violation of an administrative regulation which places the outcome of a race in dispute, the[~~such~~] money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding same.

(3) The horse that[~~which~~] crossed the finish line first and any other horse that may become the winner of a disputed race shall be considered winners[~~for which the race is claimed, shall be liable for all penalties attaching to the winner~~] of that race until the matter is[~~if~~] finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine all objections, complaints, or alleged[~~rule~~] violations of an administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling thereon. If the stewards find that an administrative regulation[~~rule~~] was violated, the stewards may penalize the persons responsible[~~therefor~~], disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in such disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. ~~If in the event~~ a horse is disqualified after a race has been declared official for pari-mutuel payoff and thereby causes revision of the order of finish in the[~~such~~] race:

(1) The pari-mutuel payoff shall in no way be affected.

(2) The stewards shall be responsible for causing appropriate corrections to be made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting such corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints against Officials. All complaints or protests by any licensee based on any decision or act of a racing official other than the stewards, or concerning any matter as may[~~should~~] occur on association grounds not provided for by Sections 4 and 5 of this administrative regulation shall be made in writing, shall be signed by the complainant, and shall be submitted to the stewards. All complaints or protests by any persons based on any decision, ~~or~~ act, or conduct of the stewards

shall be submitted to the commission, as provided by 811 KAR 2:105.

ROBERT M. BECK, JR., Chairman

LARRY R. BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 12, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2014 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 18, 2014, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation provides requirements and procedures for filing complaints or objections of violations of 811 KAR Chapter 2.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the requirements, procedures, and deadlines for filing objections or complaints of alleged violations of 811 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 grants the commission the authority to regulation conditions under which Quarter Horse, Appaloosa, and Arabian racing shall be conducted in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides owners, trainers, jockeys, and registered agents the means by which to assist in the enforcement of the administrative regulations by providing procedures by which they may provide the commission with notification of alleged violations.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the time in which an objection involving the claim of a horse must be filed. The regulation currently provides that such an objection shall be filed "not later than forty-eight (48) hours, exclusive of Sunday, after the race was run." The amendment changes the deadline to within forty-eight (48) hours of post time. The amendment also provides a catch-all deadline for any violations of 811 KAR Chapter 2 not specifically enumerated. The amendment additionally makes all necessary changes to ensure the regulations governing Quarter Horse, Appaloosa, and Arabian racing are consistent with the Thoroughbred regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the original deadline is outdated. Kentucky conducts horse racing on Sundays and so there is no reason to exclude that day from the filing time. Additionally, the current provision is unclear as to when the forty-eight (48) hours actually ends as there is no specific time assigned to "after the race was run." The regulations governing thoroughbred racing and Quarter Horse, Appaloosa, and Arabian

racing should be identical in respect to filing objections and complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides clarity and specificity for the filing of complaints so that the commission can effectively supervise and regulate horse race meetings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations, jockeys, owners, and trainers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will not result in additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit through clarity and specificity regarding the filing deadlines for various objections and complaints.

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

(a) Initially: There is no anticipated increase in cost to the Commission.

(b) On a continuing basis: There is no anticipated increase in cost to the Commission.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in 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? 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:

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Home Inspectors
(Amendment)

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738

STATUTORY AUTHORITY: KRS 198B.706, 198B.722

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) require the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to promulgate administrative regulations to provide for the inspection of the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to establish requirements for renewal of licenses and authorizes the board to establish an inactive license. This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1. ~~[Definitions. (1) "Applicant" is defined by KRS 198B.700(1).~~

~~(2) "Board" is defined by KRS 198B.700(2).~~

~~(3) "Contact hour" means fifty (50) minutes of instruction, exclusive of breaks, recesses, or other time not spent in instruction.~~

~~(4) "Licensee" is defined by KRS 198B.700(7).~~

Section 2. ~~Application Requirements. (1) An applicant for a home inspector license shall submit the following:~~

~~(a) A completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1;~~

~~(b) A two (2) inch by two (2) inch passport photograph affixed to the application form;~~

~~(c) A certificate of course completion and the applicant's national examination test score;~~

~~(d) A certificate of insurance;~~

~~(e) If applicable, other state or local licensure, certification, registration, or permit;~~

~~(f) A state-wide criminal background check from the applicant's state of residence administered by a law enforcement agency capable of conducting a background check, a recent background check performed by the Kentucky State Police, and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation[report with the results of the state-wide background check]; and~~

~~(g) A nonrefundable fee of \$250.~~

~~(2) An applicant for a home inspector license shall:~~

~~(a) Complete and pass a board-approved, prelicensing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and~~

~~(b) Pass an examination conducted by a board-approved test provider.~~

~~(3) A request to sit for the examination shall be made directly to the test provider.~~

~~(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.~~

~~(5) A passing score on the examination shall be valid for a period of three (3) years.~~

(6) Failing the examination.

(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.

(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination~~[failed examination]~~ prior to retaking the examination.

(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.

(7) Procedures and conduct.

(a) The applicant shall follow:

1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and

2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.

(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the following subject areas for at least the number of hours specified:

1. Manufactured housing: three (3) hours;

2. Standards of practice, KRS Chapter 198B and 815 KAR Chapter 6, contracts, report writing, and communications: eleven (11) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score.

(9) Criminal background checks and other disciplinary proceedings.

(a) Each applicant shall submit a state-wide criminal background check from the applicant's state of residence administered by a law enforcement agency capable of conducting a background check, a recent background check performed by the Kentucky State Police, and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation~~[undergo a state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check and submit the results of the check along with the applicant's application]~~.

(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.

~~[(c) The board shall deny or refuse to renew a license to an applicant or licensee based on the seriousness of the offense, the length of time since the offense, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence, who:~~

~~1. Has pleaded guilty to or has been convicted of a:~~

~~a. Felony; or~~

b. ~~Misdemeanor; or~~

2. ~~Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky;]~~

Section 2.[3.] Reciprocity. An applicant seeking a license through reciprocity in accordance with KRS 198B.714 shall:

- (1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b)[2(4)(b)] through (f) of this administrative regulation; ~~and~~
- (2) Pay a nonrefundable fee of \$250[; and
- (3) ~~Meet the conditions of KRS 198B.714(4)].~~

Section 3.[4.] Nonresident Licensees. A nonresident licensee shall:

- (1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b)[2(4)(b)] through (f) of this administrative regulation;
- (2) Pay the fee established in Section 1(1)(g)[2(4)(g)] of this administrative regulation; and
- (3) Comply with the provisions established in KRS 198B.716 and this administrative regulation.

Section 4.[5.] Renewal of Licenses. (1) ~~To be eligible for renewal of license, an applicant shall hold a valid and current license issued by the board and[In addition, to the requirements established in KRS 198B.722, to renew a license, the licensee]~~ shall:

- (a)[(4)] Satisfy the continuing education requirements of Section 5[6] of this administrative regulation;
- (b)[(2)] ~~Pay a nonrefundable renewal fee of \$200 per year for each license that expires on or after July 1, 2012, to and including June 30, 2014; or~~
- (3) Pay a nonrefundable renewal fee of \$250 per year for each year of licensure[license that expires on or after July 1, 2014];
- (c)[(4)] Submit a fully-completed Application for Renewal Licensure as a Kentucky Home Inspector, Form KBHI 2 and attachments, including:
 - 1.[(a)] A certificate of completion for continuing education;
 - 2.[(b)] A certification of insurance information;
 - 3.[(c)] If applicable, other state or local licensure, certification, registration, or permit; and
 - 4.[(d)] A state-wide criminal background check; and
 - (d)[(5)] Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60) days after the last day of the licensee's renewal month, the licensee shall pay a nonrefundable:

1. Renewal fee of \$250 per year for each year of licensure; and
2. Late fee of \$250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a license reinstatement application within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of \$250 per year for each year of licensure; and
2. Late fee of \$500.

(b) If a licensee failed to submit a renewal application or a license reinstatement application within 120 days of the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 198B and 815 KAR Chapter 6.

Section 5.[6.] Continuing Education. (1) The continuing

education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period[shall be required to have at least fourteen (14) hours of continuing education per license year].

(3) Prior to renewal, the continuing education shall include a minimum of the following:

- (a) Three (3) hours in manufactured housing;
- (b) Three (3) hours in KRS Chapter 198B and 815 KAR Chapter 6;[and]
- (c) Three (3) hours in report writing; and
- (d) Five (5)[Eight (8)] hours in technical courses, including identification and[; determination[; and report writing], as applicable within the standards of practice.

(4) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:080[040].

(5) An approved precursing course shall[te] satisfy the initial fourteen (14) hour continuing education requirement.

(6) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d)[(e)] of this section.

(7) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty[percent] (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

(8) The report writing course shall be completed face-to-face. An online report writing course shall not satisfy the continuing education requirement established in subsection (3)(c) of this section.

(9) A licensee shall not take the same continuing education course during a licensure period.

(10) A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.

Section 6.[7.] Inactive License. (1) Placement of a license in inactive status.

(a)1. To place a license in inactive status, a licensee shall submit a notarized statement indicating the desire to have the license placed in inactive status.

2. This notarized statement shall be mailed to the board and shall be accompanied by the following:

- a. A check for ten (10) dollars made payable to the Kentucky State Treasurer;
- b. The actual license card of the licensee; and
- c. A current mailing address for the licensee.

(b) A licensee[Licenses] in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(2) Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(3) Insurance coverage for licensees with inactive license. A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) during inactive status.

Section 7.[8.] Reactivation of Inactive License to Active Status.

(1) A licensee who wishes to reactivate a license shall contact the board and submit a notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by the following:

- (a) The name of the licensee requesting activation;

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- (b) The license number of the licensee requesting reactivation;
 - (c) The birth date of the licensee requesting reactivation;
 - (d) A current mailing address for the licensee requesting reactivation;
 - (e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;
 - (f) Proof of liability insurance naming the individual in the amount of \$250,000 as required by KRS 198B.712(3)(d);
 - (g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and
 - (h) Proof of continuing education as required by Section 8[9] of this administrative regulation; ~~and~~
- (3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered expired.

Section 8.[9-] Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the following continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete:

~~(4)]~~ fourteen (14) hours per year that the license has been inactive, ~~which~~ ~~[-This fourteen (14) hours]~~ shall include:

- (a) Three (3) hours in manufactured housing;
- (b) Three (3) hours of KRS Chapter 198B and 815 KAR Chapter 6; and
- (c) Eight (8) hours, in any combination, of:
 - 1. Electrical;
 - 2. Plumbing;
 - 3. Heating, ventilation, and air conditioning;
 - 4. Roofing; or
 - 5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy the requirement established in subsection (1) of this section~~[this requirement]~~.

Section 9.[40-] Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain the following records for at least three (3) years from the date of the inspection:

- 1. The written reports;
- 2. The contract; and
- 3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 10. (1) The board may deny, refuse to renew, or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pleaded guilty to, or been convicted of a:

- 1. Felony; or
- 2. Misdemeanor; or

(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 11. The board shall deny, refuse to renew, or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS Chapter 198B or this administrative regulation.

Section 12.[44-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Kentucky Home Inspector", Form KBHI 1, 7/2014[1-2012]; ~~and~~

(b) "Application for Renewal Licensure as a Kentucky Home Inspector", Form KBHI 2, 7/2014; and

(c) "License Reinstatement Application", Form KBHI 6, 7/2014[1-2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 governs the application and examination process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements concerning examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing the examination of applicants for registration.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements concerning examination.

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

(a) How the amendment will change the existing administrative regulation: This amendment governs the application and examination process.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to establish the requirements concerning examination.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing of applicants for registration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the requirements concerning examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 360 licensed home inspectors, six precertifying providers, and five continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to meet the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The cost of the application is \$100 and the biennial renewal is \$250 per year. A late fee for a renewal application submitted within the sixty (60)-day grace period is \$250.00, a new fee. The late fee for a reinstatement application submitted outside the sixty (60)-day grace period is \$500.00, a new fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be informed of the process for taking the examination.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Home Inspectors is funded from fees paid by licensees and applicants as well as a quarterly stipend.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: 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 or increase any fees or directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a) and 198B.712(2)(c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate approximately \$500 in

revenue, which is a decrease from the current amount.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board of Home Inspectors (Amendment)

815 KAR 6:030. Home inspector standards of conduct.

RELATES TO: KRS 198B.706, 198B.728

STATUTORY AUTHORITY: KRS 198B.706

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. This administrative regulation establishes standards of conduct for home inspectors.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business[;] shall:

(1) Act as an unbiased third party to the real estate transaction;

(2) Discharge the duties of a home inspector with integrity and fidelity to the client;

(3) Express an opinion on any aspect of the inspected property only if that opinion is based upon the experience, training, education, and personal opinion of the inspector;

(4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:

(a) Products or additional services to be purchased from or provided by the inspector, his or her agents, or employees;

(b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or

(c) Products or additional services to be purchased which will result in any additional compensation or benefit to the inspector, financial or otherwise; and

(5) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection.

Section 2. Additional Standards. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee conducts business[;] shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;

(2) Perform repairs or modifications for compensation, or for other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, if the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if the home inspector purchases the residence after performing the inspection;

(3) Provide a home inspection to the client that does not conform to the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010;

(4) Provide services that constitute the unauthorized practice of

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any profession that requires a special license if the home inspector does not hold that license;

(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be considered compensation, inducement, or reward;

(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;

(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;

(8) Disclose any information concerning the results or content of the home inspection report without the [written] approval of the client for whom the home inspection was performed. However, the home inspector may disclose information if there is an imminent danger to life, health, or safety, or where the home inspector is compelled to disclose information by court order;

(9) Accept compensation, financial or otherwise, from more than one (1) interested party for the same home inspection on the same property without the written consent of all interested parties;

(10) Make a false or misleading representation regarding:

(a) The condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;

(b) The extent of the services the licensee has performed or will perform; or

(c) The type of license held by the licensee;

(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;

(12) Make a false or misleading representation:

(a) In a license or renewal application form; or

(b) In information provided to the board;

(13) Fail to pay any fees required by 815 KAR 6:010;

(14) Fail to continuously maintain the insurance or other evidence of financial responsibility required by KRS Chapter 198B or 815 KAR Chapter 6;

(15) Engage in any course of lewd or immoral conduct in connection with the delivery of services to clients;

(16) Fail to complete the continuing education requirements established by the board in 815 KAR 6:010;

(17) Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;

(18) Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement; [or]

(19) Continue to practice, if the licensed home inspector has become unfit to practice due to:

(a) Professional incompetence;

(b) Failure to keep abreast of current professional theory or practice;

(c) Physical or mental disability;

(d) Addiction to, abuse of, or severe dependency on [.] alcohol or other drugs that endanger the public by impairing a licensed home inspector's ability to practice safely; or

(e) Failure to maintain a valid home inspector's license;

(20) Omit information in a home inspection report required to be disclosed to a client by the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010; or

(21) Fail to comply with an order of the board. [Section 3. Disciplinary Actions and Appeals. (1) Pursuant to KRS 198B.728, the board may investigate complaints related to violations of this administrative regulation and may impose the following penalties:

(a) Denial of a license;

(b) Suspension of a license; or

(c) Revocation of a license.

~~(2) The licensee shall be notified of the proposed penalties in writing sent to the licensee's address on file with the board.~~

~~(3) If a licensee chooses to appeal a proposed penalty, the~~

~~licensee shall notify the board of his appeal in writing within ten (10) days of the notice of the proposed penalty.~~

~~(4) All appeal proceedings shall be conducted in accordance with KRS Chapter 13B.]~~

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2014, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 governs the conduct of licensed home inspectors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the code of professional conduct for licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a professional code of conduct in accordance with KRS 198B.706(1).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the code of professional conduct that must be followed by licensees in order to protect the public.

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

(a) How the amendment will change the existing administrative regulation: The amendment clarifies the code of professional conduct.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the requirements of the code of professional conduct.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing a professional code of conduct in accordance with KRS 198B.706(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the code of professional conduct that must be followed by licensees in order to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 360 licensed home inspectors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to conform their professional activities to the requirements of this administrative regulation in order to protect the public.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No costs are associated with conforming to the code of professional code.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the code of professional conduct, the entities identified in question (3) will be acting in a manner that protects the public.

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

(a) Initially: No initial costs will be required to implement the administrative regulation.

(b) On a continuing basis: No continuing costs will be required to implement the administrative regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 198B.706.

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

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

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

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

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board of Home Inspectors (Amendment)

815 KAR 6:040. Home inspector preclicensing[and continuing education] providers.

RELATES TO: KRS 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706(2), (15), 198B.712(2)(c), 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738[and to establish requirements for continuing education]. KRS 198B.712(2)(c) requires an applicant to complete a board-approved[training program or] course of study.[KRS 198B.724 requires the board to establish continuing education requirements.] This administrative regulation establishes the procedures for being approved by the board as a preclicensing[or a continuing education] provider.

Section 1. Prelcense Course Provider Approval. An applicant[Definitions. (1) "Board" is defined in KRS 198B.700(2).

(2) "Contact hours" means fifty (50) minutes of instruction, exclusive of any breaks, recesses, or other time not spent in instruction.

(3) "Continuing education provider" means the person or legal entity who is registered pursuant to this administrative regulation and who is responsible for conducting a continuing education course approved pursuant to this administrative regulation.(4) "Preclicensing course provider" means the person or legal entity who is registered pursuant to this administrative regulation and who is responsible for conducting a course approved pursuant to this administrative regulation.

Section 2. Registration Requirements. (1) Applicants] to be a preclicensing course provider shall submit the following:

(1)[(a)] A properly completed ["]Application for Approval as a Pre-Licensing Course Provider for Home Inspectors["], Form KBHI 3;

(2) A \$500 nonrefundable application fee;

(3) A copy of the Certificate of Approval from the Kentucky State Commission for Proprietary Education, if required by KRS Chapter 165A or proof that the applicant is exempt from licensure[(b) A nonrefundable fee of \$500];

(4) A syllabus of all courses that will be offered, which shall include the physical location of each laboratory and field training portion of the courses;

(5) A list of all course instructors;

(6) A copy of each brochure used to advertise the courses; and

(7) A sample of the official transcript[(c) Information required to demonstrate that its course meets the requirements of 815 KAR 6:040, Section 2(8); and

(d) A surety bond in a form acceptable to the board and in the amount of \$50,000.

(2) Applicants to be a continuing education course provider shall submit the following:

(a) A properly completed "Application for Approval as a Continuing Education Course Provider for Home Inspectors", Form KBHI 4; and

(b) A nonrefundable fee of \$100].

Section 2.[3.] Renewals. A provider's approval[(1) Provider registration] shall expire every two (2) years.[(2)] To renew its approval[registration], each provider shall submit the application and fee required for initial approval[registration].

Section 3.[4.] Required records. (1) Each provider shall maintain the following records with respect to each course:

(a) The time, date, and place each course is completed;

(b) The name, address, and qualifications of each instructor who teaches any portion of the course and whether each instructor has been approved by the board;

(c) The name and[,] address[, and license number, if

applicable,] of each person who registered for the course;

(d)[The original sign-in sheet used at the site of the course to register persons who attend each course. The sign-in sheet shall require every person to print their name, list their license number, if applicable, and sign their name;

(e)] The course syllabus used for each course; and

(e)](f)] The course evaluations.

(2) The provider shall issue to each person who successfully completes an approved course, a certificate of completion containing the following:

(a) The name of the attendee;

(b)[The license number, if applicable, of the attendee;

(c)] The name of the provider;

(c)](d)] The course name;

(d)](e)] The course number;

(e)](f)] The date of the course; and

(f)](g)] The total number of contact hours successfully completed in each subject covered by the course.

(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request.

(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.[Section 5. Approval of Continuing Education Courses. (1) A continuing education provider shall submit a request for approval of a continuing education course which shall include the following:

(a) The total number of contact hours;

(b) The course syllabus;

(c) A detailed outline of the contents of the course;

(d) The name and qualifications of all instructors known at the time of the request for approval; and

(e) The minimum qualifications of any instructors not known at the time of the request for approval.

(2) The fee for course approvals shall be twenty-five (25) dollars per class, per date offered. A continuing education provider shall not pay in excess of \$250 in course approval fees in any one (1) year.

(3) The board shall approve continuing education courses which:

(a) Appropriately relate to the general business skills or the technical skills required of licensees;

(b) Contain sufficient educational content to improve the quality of licensee performance;

(c) Are taught by qualified instructors; and

(d) Have a course evaluation.

(4) Continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and if the registration of the provider has not expired or been suspended or revoked. Substantial changes made in any course shall require a new approval of that course. A provider shall reapply for course approval ninety (90) days prior to the date of expiration of the previous course approval.

(5) A course which has been denied may be resubmitted to the board with modifications.

(6) If a course is approved, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, in all other course materials used in connection with the course, and in all written advertising materials used in connection with the course.]

Section 4.[6.] Qualifications of Course Instructors. (1) Each[All] course instructor[instructors] shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.

(2) Any person with a four (4) year college degree or graduate degree, with at least two (2) years of work experience in that field, shall be qualified to teach a[continuing education or] prelicensing course in that person's[their] field of study.

(3) To qualify as an instructor based on experience, an individual shall:

(a) Be licensed and have actively practiced for at least five (5) years as a home inspector; or

(b) Have five (5) years of experience in a related field of home inspection or the building sciences.

(4) A licensee whose license is suspended or revoked as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended or revoked.

(5)[(4)] A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.

Section 5.[7.] Course Syllabus. (1) Each course shall have a course syllabus that identifies:

(a) The name of the course;

(b) The number of the course assigned by the board;

(c) The name and address of the provider;[and]

(d) A description or outline of the contents of the course; and

(e) The location of each course component.

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course.[The syllabus may be distributed when the person registers their attendance at the course.]

Section 6.[8.] Course Advertising. (1) A provider shall not advertise a course as [one] approved until the approval is granted by the board.

(2) A provider shall not include any false or misleading information regarding the contents, instructors, location of classrooms or laboratory courses, or number of contact hours of any course approved under this administrative regulation.

(3) A provider shall include its provider number and course numbers in all advertising.

[Section 9. Disciplinary Matters. (1) The board may deny, suspend, or revoke the registration of any prelicensing course or continuing education provider for any of the following acts or omissions:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;

(b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;

(c) Failing to timely notify the board of a change in the information required for registration of the provider;

(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;

(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;

(f) Failing to adequately train the staff responsible for taking attendance at any approved course;

(g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;

(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;

(i) Failing to include provider and course numbers in advertisements;

(j) Failing to maintain a record of instructors;

(k) Failing to resolve attendance reporting problems; and

(l) Failing to comply with any other duty imposed on providers in this administrative regulation.

(2) Disciplinary action shall be initiated by the board by written notice to the provider by certified mail, return receipt requested, to the provider's address on file with the board.

(3) A provider may appeal a proposed disciplinary action by notifying the board in writing within ten (10) days of its desire to appeal.

(4) All appeals shall be governed in accordance with KRS Chapter 13B.

(5) A provider whose registration has been revoked shall not reapply for registration for two (2) years from the date of revocation.]

Section 7.[10.] Incorporation by Reference. (1) [The following material is incorporated by reference:

(a)] "Application for Approval as a Prelicensing Course Provider for Home Inspectors", Form KBHI 3[", 7/2014, is

incorporated by reference [April 2006; and

(b) "Application for Approval as a Continuing Education Course Provider for Home Inspectors, Form KBHI 4", April, 2006].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive [Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Mitch Buchanan, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2014, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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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 application process for the Board to approve pre-licensing courses.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide guidance to applicants who wish to provide pre-licensing courses in home inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate administrative regulations per KRS 198.706.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the documents required to be submitted with the application and also notifies applicants that they must also apply with the Kentucky Board of Proprietary Education to operate a school.

(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 require applicants to provide a Certificate of Approval from the Kentucky Board of Proprietary Education, as well as other specified documents with the application for approval of the pre-licensure by the Board. The amendment also deletes the licensure process for continuing education course providers from this regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure pre-licensure course providers meet the standards to operate a school in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 198B.706 by detailing the application process for board approval of pre-licensing courses.

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

Board with more specific information about the course work which will reduce subsequent requests for additional information, allowing for a more efficient approval process and will ensure each provider is licensed to operate a school in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately five (5) board approved pre-licensing course providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Applicants will have to comply with KRS Chapter 198B and 815 KAR 6:010, as well as this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant for approval as a pre-license course provider shall pay \$100 for initial licensure and \$100 for renewal every two (2) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will decrease the current \$500 application fee to \$100 and allow qualified applicants who meet statutory and regulatory criteria to provide pre-licensure courses in the Commonwealth of Kentucky. The regulation will also inform the entities that they are governed by another regulatory agency.

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

(a) Initially: Costs to implement this administrative regulation will be minimal, mainly consisting of the cost to make copies of the revised application form.

(b) On a continuing basis: No additional costs are anticipated.

(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 licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors and Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a) and 198B.712(2)(c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

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

years? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.015, 216B.040, 216B.095(3)(a)-(f) [216B.040, 216B.062, 216B.990]

STATUTORY AUTHORITY: KRS [194A.030, 194A.050,] 216B.040(2)(a)1, 216B.062(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Formal review" means the review of an application[applications] for certificate of need which is[are] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[are] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18)(17). (6) "~~Public information channels~~" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of an Application for Formal Review[Applications]. (1) The cabinet's timetable for giving public notice for an application[applications] deemed complete for formal review[and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075] shall be as established in this subsection.:

(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level 1 PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), and a new technological development[developments] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for an application for a residential hospice facility[facilities], a hospice service[agencies], and a home health agency[agencies] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for an application for a Class I, II, III and VI ground ambulance service[providers], and a private duty nursing service[services, mobile services, and rehabilitation agencies] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for an application for a day health care program [programs, prescribed pediatric extended care facilities, and personal care beds] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for an application for long-term care beds, an acute care hospital[hospitals] including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, an[limited services clinics, ambulatory care centers, freestanding] ambulatory surgical center [centers], and an outpatient health care center[centers, and birthing centers] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for an application for an intermediate care facility[facilities] for individuals with an intellectual disability shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) In order to have an application for formal review deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. An initial application[applications] filed more than eighty (80) days prior to the desired public notice shall be returned to the submitter with the prescribed fee set forth in 900 KAR 6:020.

Section 3. Timetable for Submission of an Application for Nonsubstantive Review. (1) The cabinet shall give public notice for an application deemed complete and granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (f) in the Certificate of Need Newsletter published on the third Thursday of each month.

(2) In order to have an application for nonsubstantive review deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice[An application filed pursuant to KRS 216B.095(3)(a) through (e) may be filed at any time].

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street,

Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation through September 30, 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: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute KRS 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the timetable for submissions of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the timetable for submission of certificate of need applications. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter.

(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: Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter, eliminating the need to mail separate notices for each application.

(b) The necessity of the amendment to this administrative regulation: In accordance with KRS 216B.062, applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) will no longer be batched semi-annually with the same or similar types of services for review purposes, but will be batched monthly. Applications requesting nonsubstantive review status under KRS 216B.095(3)(a) through (e) will be batched monthly, eliminating the need to do separate mailings for each application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly

administration of the certificate of need process, including the timetable for submission of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

(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: Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given monthly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually with the same or similar types of services for review purposes. Public notice for certificate of need applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (e) shall be given monthly in the published Certificate of Need Newsletter, eliminating the need to mail separate notices for each application.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be given in the monthly published Certificate of Need Newsletter. These applications will no longer be batched semi-annually with the same or similar types of services for review purposes in accordance with KRS 216B.062.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city shall be permitted to file nonsubstantive review applications under the provisions of KRS 216B.095(3)(f) and be batched monthly for review purposes instead of being batched semi-annually with the same or similar types of services for review purposes

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1

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:

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

900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095[216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990]

STATUTORY AUTHORITY: KRS [194A.030, 194A.050.] 216B.040(2)(a)1[, 216B.330]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[(5)].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application[applications] for certificate of need which is[are] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[are] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18)[(47)].

(6) "Owner" means a person as defined in KRS 216B.015(22)[(24)] who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Proposed service area" means the geographic area the applicant proposes to serve.

(8)[~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~]

(9) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(40) "Secretary" is defined by KRS 216B.015(26)[(25)].

(9)[(44)] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) Except for an applicant requesting nonsubstantive review under the provisions of KRS

216B.095(3)(a) through (f), OHP - Form 1, Letter of Intent, incorporated by reference in 900 KAR 6:055, shall be filed with the cabinet by an[each] applicant for a certificate of need. [This shall:

(a) ~~include those applicants requesting nonsubstantive review under the provisions of 900 KAR 6:075; and~~

(b) ~~not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).]~~

(2) Upon receipt of a letter of intent, the cabinet shall within three (3) days[~~one (1) day~~] provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published Certificate of Need Newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: OHP - Form 2A, OHP - Form 2B, or OHP - Form 2C, incorporated by reference in 900 KAR 6:055.

(2) To file an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been deemed complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service;

or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been deemed complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) An applicant which has had a certificate[Applicants who have had proposals for certificates] of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f)[900 KAR 6:075 or under the provisions of KRS 216B.095(3)(a) through (e)] may request that the cabinet change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application~~[all applications]~~ for certificate of need shall be reviewed for completeness pursuant to Section 5 of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 5. Completeness Review. (1)~~[(a)]~~ Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f)~~[900 KAR 6:075]~~.~~[(b) Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.]~~

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5)~~[(a)]~~ The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f)~~[900 KAR 6:075]~~ in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

~~[(b) Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.]~~

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for applications granted nonsubstantive review status under the provisions of KRS 216B.095 (3)(a) through (f)~~[900 KAR 6:075]~~ that status has been granted and that review of the application for approval or denial of a certificate of need has begun.~~[Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.]~~

(10) If the application is incomplete, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing; ~~[or]~~

(b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 6. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months

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from the original date of filing, absent a change in circumstances.

Section 7. Deferral of an Application. (1)(a) Except as described in paragraphs (b) and (c) of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c) If an application has been deferred prior to the effective date of this administrative regulation, an applicant may defer review of the application a maximum of one (1) additional time.

(d)(a)1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(e)(b)1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090, no later than eight (8) days prior to the date of the hearing.

(f)(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed [deferral is requested], the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application which has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the following month.

(5) If an application for nonsubstantive review is deferred, an applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 8. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(3) If an applicant withdraws a deferred application within the period from January 1, 2015 through June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee which was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 9. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the

location stated on the certificate.

Section 10. Requests for Reconsideration. (1) Requests for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation through September 30, 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: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute KRS 216B. 040(2)(a)1. (c) How this

administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, deferral and reconsideration process. The proposed revision limits the number of times a certificate of need application can be deferred to two (2) times (or one (1) additional time for applications currently on deferred status) and prohibits the deferral of the review of certificate of need applications to alleviate an emergency circumstance. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given monthly in the published Certificate of Need Newsletter. This will eliminate mailing public notices for individual nonsubstantive review applications under KRS 216B.095(3)(a) through (e) and semi-annual batching of nonsubstantive review applications under KRS 216B.095 (3)(f) with similar types of services for review.

(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 revision limits the number of times a certificate of need application can be deferred to two (2) times (or one (1) additional time for applications currently on deferred status). The proposed revision also prohibits the deferral of the review of certificate of need applications to alleviate an emergency circumstance. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given in the monthly published Certificate of Need Newsletter.

(b) The necessity of the amendment to this administrative regulation: Currently more than fifty (50) applications are on deferral status, with some applications having been deferred for over ten (10) years. Repeated deferrals of certificate of need applications cause an administrative burden for the Office of Health Policy and the Division of Administrative Hearings, and for affected parties. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) shall be given monthly in the published Certificate of Need Newsletter. This will eliminate mailing public notices for individual nonsubstantive review applications under KRS 216B.095(3)(a) through (e) and batching nonsubstantive review applications under KRS 216B.095 (3)(f) with similar types of services semi-annually for review.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, including the application deferral process.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, including the deferral process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted. Currently over fifty (50) applications have deferral 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: The number of times a certificate of need application can request deferral will be limited. After the maximum number of deferrals allowed, a decision will be issued or the applicant may withdraw the application. Applications for nonsubstantive review status granted under KRS 216B.095(3)(f)

will no longer have to be batched semi-annually with similar services, but will instead be batched monthly.

(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 certificate of need fees is not proposed. However, after the maximum number of deferrals allowed, a decision will be issued or the applicant may withdraw the application. The CON filing fee is not refundable, however the amendment states that if applications currently on deferred status are withdrawn between January 1 and June 30, 2015 and resubmitted within five (5) years, the certificate of need fee established in 900 KAR 6:020 for the new application shall be adjusted by the cabinet to credit the applicant for the certificate of need fee paid for the withdrawn application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed health facilities which are affected parties for certificate of need applications will avoid the cost of repeated filings of hearing requests and hearing documents. Public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(f) shall be monthly, rather than being batched with the same or similar types of services semi-annually.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The number of times a certificate of need application can be deferred will be limited by this amendment. If a state, county or city owned facility is an affected party to a certificate of need application, there will be less administrative cost for requesting hearings and filing hearing documents with the limitation of times an application can be deferred. Applicants for nonsubstantive review status granted under KRS 216B.095(3)(f) will no longer have to be batched semi-annually with similar services, but will instead be batched monthly.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amendment)

902 KAR 2:055. Immunization data reporting and exchange.

RELATES TO: KRS 158.035, 211.090, 211.180, 214.032-214.036, 45 C.F.R. [164.510,] 164.512(b)

STATUTORY AUTHORITY: KRS 158.035, 158.037, 194A.050, 211.090(3), 211.180, 214.034, 214.036, 45 C.F.R. 164.512

NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-64, effective December 16, 2003, reorganized the Cabinet for Health Services and placed the Department for Public Health and the Division of Epidemiology and Health Planning under the Health and Family Services Cabinet. KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires public or private primary or secondary schools, day-care centers, certified family child-care homes, or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance. KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician, an advanced practice registered nurse, a physician's assistant, a pharmacist, local health department administrator or a registered nurse designee of a physician, local health department administrator or other licensed healthcare facility. KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for public or private schools to report immunization results to local health departments. 45 C.F.R. 164.512(b), implementing regulations for the [Federal] Health Insurance Portability and Accountability Act (HIPAA), permit a covered entity to disclose [permits disclosure of] protected health information (PHI) [to local and state public agencies] for public health activities and purposes to a public authority that is authorized by law to collect or receive that information for prevention or controlling disease or surveillance [without written authorization of the individual]. Vaccinations [te] prevent disease and are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance. This administrative regulation establishes requirements for reporting immunization results in schools by the public health immunization reporting entity [preschools, and day-care facilities] and permits recording and exchange of immunization data.

Section 1. Definitions. (1) "Public health immunization reporting entity" means a:

(a) Health care provider;

(b) Health insurer;

(c) Public and private elementary and secondary school;

(d) Childcare facility;

(e) Preschool;

(f) Public or private postsecondary educational institution; and

(g) State and local health departments [health care providers, health insurers, public and private elementary and secondary schools, childcare facilities, preschools, public or private postsecondary educational institutions, and state and local health departments who are involved in the collection, recording, and

exchange of immunization information for public health purposes].

(2) "Public health interest" means participation in core public health functions such as:

(a) Surveillance;

(b) [.] Data collection;

(c) [.] Vaccination;

(d) [.] Vaccination certification; [.] or

(e) Prevention of communicable diseases for the protection of the public's health and safety.

Section 2. Immunization Reporting. (1) [~~Day-care centers, head start programs,~~] Kindergartens and public and private elementary and secondary schools shall submit to the local health department in their area immunization results on the Commonwealth of Kentucky School/Facility Annual Immunization Survey.

(2) The annual survey shall include the number of:

(a) Students in the grade surveyed;

(b) Missing immunization records;

(c) Religious exemptions;

(d) Medical exemptions; and

(e) Children who have received age-appropriate immunizations.

Section 3. Immunization Data Exchange. (1) A public health immunization reporting entity may record and exchange immunization data [without authorization from the patient or the patient's parent or guardian, if the patient is a minor,] if the person requesting the data provides health related or educational services on behalf of the patient or has a public health interest in compliance with the Federal Health Insurance Portability and Accountability Act (HIPAA).

(2) Immunization data may be recorded and exchanged electronically via an immunization registry.

(3) Immunization data that may be recorded and exchanged may [shall] include:

(a) Patient's name;

(b) Patient's address;

(c) Date of birth;

(d) Gender;

(e) Social Security number;

(f) Medicaid number;

(g) Birth state;

(h) Birth County;

(i) Mother's name;

(j) Mother's maiden name;

(k) Mother's date of birth;

(l) Mother's Social Security number;

(m) Father's name;

(n) Father's date of birth;

(o) Father's Social Security number;

(p) Guardian's name;

(q) Date vaccines were administered;

(r) Vaccine type;

(s) Vaccine lot number;

(t) Vaccine manufacturer; and

(u) Vaccine contraindications or adverse reaction indications.

(4) This section shall apply to immunization data regardless of when the immunizations occurred or the medium used to collect and exchange the data.

Section 4. Incorporation by Reference. (1) "Commonwealth of Kentucky School/Facility Annual Immunization Survey", 3/2004["] is incorporated by reference.

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

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 22, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 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. 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 regarding this proposed administrative regulation through September 30, 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 - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, (502) 564-7573 fax, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does:

Kentucky Administrative Regulation 902 KAR 2:055 establishes requirements for reporting immunization results in schools, preschools, and day care facilities and permits recording and exchange of immunization data.

(b) The necessity of this administrative regulation. This regulation is necessary for enabling day care centers, head start programs, kindergartens and public and private elementary and secondary schools to submit to the local health department in their area immunization results on the Commonwealth of Kentucky School/Facility Annual Immunization Survey.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 211:180 requires a statewide program for the detection, prevention and control of communicable diseases.

KRS 214.034 requires public or private primary or secondary schools, day care centers, certified family child care homes or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance.

KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician.

(d) How this administrative regulation currently assists in the effective administration of the statutes. The administrative regulation is needed to provide guidance and clarity for the implementation of data collection in compliance with the federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation establishes requirements for reporting immunization results in schools, preschools, and day-care facilities and permits recording and exchange of immunization data. In the past, the Centers for Disease Control and Prevention (CDC) have required the Immunization Program to gather data regarding immunization results from day-care facilities, preschools, and head-start programs from all states. CDC no longer requires data concerning immunizations from preschools, day-care facilities or head-start programs. The amendment also provides language in compliance with changes to federal law, specifically, 2013 amendments to HIPAA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce manpower, time, resources and collections of unnecessary and unused data that is concurrently being assessed by the Office of the Inspector General (OIG).

(c) How the amendment conforms to the content of the authorizing statute: KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for

public or private schools to report immunization results to local health departments. The amendment is further necessary to provide guidance on HIPAA compliance when collecting and exchanging the data.

(d) How the amendment will assist in the effective administration of the statute: This amendment will help to assure compliance with the required data collection elements in the federal statute and state regulation as it relates to immunization collection and HIPAA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulations. The following will be affected by the administrative regulation: Department for Public Health, Immunization Program, Local Health Departments, Preschools, Daycare Facilities and Head-Start Programs.

(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 be the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities will no longer need to provide unnecessary or unused data reports for preschools, daycares or head-start programs to state and federal governments.

(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 those entities as a result of amendment. Rather, it is estimated to save the Department for Public Health, local health departments, public and private schools, preschools, daycares, and head start facilities will realize a potential combined savings of over \$170,000 in employee time and resources as a result of the amendments to this regulation.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): This would be a substantial savings to DPH, LHD's, as well as, preschools, day care facilities, head-starts and the Board of Education as it is estimated to provide these entities a potential combined savings of over \$170,000 in employee time and resources as a result of the amendments to this regulation.

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

(a) Initially: There are no costs associated with the implementation of this regulation. Rather, it is estimated to save the Department for Public Health, local health departments, public and private schools, preschools, daycares, and head start facilities a potential combined savings of over \$170,000 in employee time and resources as a result of the amendments to this regulation.

(b) On a continuing basis: There are no costs associated with the implementation of this regulation. Rather, it is estimated to save the Department for Public Health, local health departments, public and private schools, preschools, daycares, and head start facilities will realize a potential combined savings of over \$170,000 in employee time and resources as a result of the amendments to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Currently federal, state, and private funds are used to support immunization data collection.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this regulation does not directly or indirectly increase any fees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 164.512(b) permits disclosure of protected health information (PHI) to local and state public agencies for public health activities and purposes without written authorization of the individual. Vaccinations to prevent disease are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance.

2. State compliance standards. KRS 158.035 prohibits a child from enrolling as a student in a public or private elementary or secondary school unless the child presents with a current immunization certificate issued by a licensed medical or osteopathic physician. KRS 158.037 requires the Cabinet for Health and Family Services to promulgate administrative regulations for public or private schools to report immunization results to local health departments. KRS 211.180 requires the Cabinet for Health and Family Services to implement a statewide program for the detection, prevention and control to communicable diseases. KRS 194A.050 allows execution of policies, plans and programs in necessary for the administrative regulation of fees, not greater than one hundred dollars (\$100) to cover the cost of annual inspections. KRS 211.090(3) adopts rules and regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 214.034 requires public or private primary or secondary schools, day-care centers, certified family child-care homes, or any other licensed facility which cares for children to maintain a current immunization certificate on file for each child in attendance.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation, Kentucky will be in full compliance with federal statutes and regulations.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

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?

- (a) Public or Private Primary or Secondary schools,
- (b) Day Care Centers
- (c) Certified Family Child Care Homes
- (d) Or any Licensed Facility which cares for Children
- (e) Local Health Departments
- (f) Immunization Program
- (g) Boards of Education

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

- (a) KRS 158.035
- (b) KRS 158.037
- (c) KRS 194A.050
- (d) KRS 211.090(3)
- (e) KRS 211.180
- (f) KRS 214.032-036
- (g) 45 C.F.R. 165.512(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? There will be no revenue generated by this administrative regulation 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? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no expenditures to implement this administrative regulation during the first year. Rather, it is estimated the Department for Public Health, local health departments, public and private schools, preschools, daycares, and head start facilities will realize a potential combined savings of over \$170,000 in employee time and resources as a result of the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation for subsequent years.

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

Revenues (=/-)

Expenditures (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(Amendment)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means a provider that is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A licensed clinical social worker;
- (h) A licensed professional clinical counselor;
- (i) A licensed marriage and family therapist;
- (j) A licensed psychological associate;
- (k) A marriage and family therapy associate;
- (l) A certified social worker;
- (m) A licensed professional counselor associate;
- (n) A licensed professional art therapist; or
- (o) A licensed professional art therapist associate.

(3) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed psychological associate;
- 2. A licensed professional counselor associate;
- 3. A certified social worker;
- 4. A marriage and family therapy associate;
- 5. A licensed professional art therapist associate;
- 6. A licensed assistant behavior analyst;
- 7. A physician assistant; or
- 8. A certified alcohol and drug counselor; and
- (b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who [or] group of individual providers that, or organization that:

- (a) Is authorized to bill the department or a managed care

organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(5) "Billing supervisor" means an individual who is:

(a) 1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed psychologist;

5. A licensed clinical social worker;

6. A licensed professional clinical counselor;

7. A licensed psychological practitioner;

8. A licensed marriage and family therapist;

9. A licensed professional art therapist; or

10. A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(6) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.

(7)[(4)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(8)[(5)] "Department" means the Department for Medicaid Services or its designee.

(9)[(6)] "Electronic signature" is defined by KRS 369.102(8).

(10)[(7)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(11)[(8)] "Face-to-face" means occurring:

(a) In person; or

(b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(12)[(9)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(13)[(10)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(14) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

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

(16)[(12)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(17)[(13)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(18)[(14)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(19)[(15)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(20)[(16)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(21)[(17)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(22)[(18)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(23)[(19)] "Licensed psychological associate" means an individual who:

(a) 1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist.

(24)[(20)] "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(25)[(21)] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(26)[(22)] "Managed care organization" means an entity for

which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(27)[(23)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(28)[(24)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(29)[(25)] "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

(30)[(26)] "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(31)[(27)] "Physician" is defined by KRS 205.510(11).

(32)[(28)] "Physician assistant" is defined by KRS 311.840(3).

(33)[(29)] "Provider" is defined by KRS 205.8451(7).

(34)[(30)] "Provider abuse" is defined by KRS 205.8451(8).

(35)[(31)] "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(36)[(32)] "Recipient" is defined by KRS 205.8451(9).

(37)[(33)] "Recipient abuse" is defined by KRS 205.8451(10).

(38)[(34)] "Registered nurse" is defined by KRS 314.011(5).

(39)[(35)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 22, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independently enrolled providers (such as a licensed psychologist, licensed professional clinical counselor, licensed clinical social worker, licensed psychological practitioner, licensed marriage and family therapist) rather than agency behavioral health service providers (such as a community mental health center, federally qualified health center, or rural health clinic.)

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers. The Department for Medicaid Services (DMS) is expanding its scope of behavioral health service coverage to include substance use disorder services as a result of an Affordable Care Act mandate for Medicaid programs to cover such services for all Medicaid recipients. Currently, DMS covers such services for pregnant women and children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 creates/inserts a definition for "behavioral health practitioner under supervision", "billing supervisor", "certified alcohol and drug counselor", and "healthcare common procedure coding system".

(b) The necessity of the amendment to this administrative regulation: Inserting the four (4) new definitions is necessary to define practitioners authorized to render services in a behavioral health services organization or BHSO. A BHSO is a new category of provider of behavioral health services of which the coverage and reimbursement provisions are established in 907 KAR 15:020 (Coverage provisions and requirements regarding behavioral health services) and 907 KAR 15:025 (Reimbursement provisions and requirements regarding behavioral health services). Coverage and reimbursement of BHSO services is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments after comments will conform to the content of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments after comments will assist in the effective administration of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

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

administrative regulation: Medicaid recipients of behavioral health services and BHSOs (as well as behavioral health practitioners who work for BHSOs) will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation as it only contains definitions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its behavioral health provider/practitioner

base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Administration and Financial Management (Amendment)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for state owned facilities~~a facility operated by the cabinet~~ at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance, and treatment at state owned facilities~~operated by the cabinet~~.

Section 1. Facility Rates. (1) Facilities owned~~operated~~ by the

state~~cabinet~~ shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follows:

Facility	Rate
Central State Hospital	\$1,025 [\$865]
Bingham Gardens	\$1,500 [\$1,590]
Western State Hospital	\$740
Western State Nursing Facility	\$385 [\$325]
Outwood ICF/MR	\$775 [\$650]
Oakwood Community Center	Unit 1 \$1,225 [\$1,320]
	Unit 2 \$1,115 [\$1,200]
	Unit 3 \$1,110 [\$1,200]
	Unit 4 \$1,115 [\$1,200]
Hazelwood Center	\$1,015 [\$890]
Glasgow State Nursing Facility	\$355
Del Maria	\$625 [\$630]
Meadows	\$750 [\$735]
Windsong	\$680 [\$770]
Eastern State Hospital	\$625 [\$665]

(3) A separate charge shall be imposed if the following treatment services are provided at a Department for Behavioral Health, Developmental and Intellectual Disabilities facility listed in subsection (2) of this section:

- (a) Physician's services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant; and
- (p) Advanced practice registered nurse.

Section 2. Board, Maintenance, and Treatment Charges. The cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for inflation. Current rates shall be posted at each facility.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 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. 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 regarding this proposed administrative regulation through September 30, 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 - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula DeWitt or Susan Walker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the patient cost per day for board, maintenance, and treatment for a facility owned by the state which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 210.720(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish, at frequent intervals, the patient cost per day for board, maintenance and treatment for a facility owned by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the patient cost per day for board, maintenance and treatment for a facility owned by the state as required by KRS 210.720(2). The per diem rates are determined by applying a formula that has been in use since the 1980s. This formula calculates per diem rates by dividing actual costs for a state owned facility (using cost reports from a previous fiscal year) by the total number of a patient's days.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities owned by the state as required by KRS 210.270(2).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the cabinet complies with KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for each facility owned by the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility owned by the state at a frequent interval.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1) requires that every patient admitted to a facility owned by the state, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment which is based on a formula in use for over twenty (20) years that calculates per diem rates by dividing actual cost for a state owned facility (using cost reports from the previous fiscal year) by the total number of patient days.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifteen (15) state owned facilities affected by this administrative regulation. In addition, this amendment will affect only a small number of patients (approximately ten (10) on any given day out of an average daily statewide census in excess of 1,000) admitted to these facilities who have the financial resources to be 100 percent self-pay and are uninsured. Medicare pays at the reimbursement rates it establishes under CMS requirements, not the per diem rates found in this regulation. Private insurers and MCOs will pay a negotiated rate to state owned facilities – just as they do with other health care providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing systems.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost for a state owned facility to

comply with this administrative regulation. For those few patients who are uninsured and have the resources to be 100 percent self-pay, the per diem rate will increase in some state owned facilities. Thus, they would pay more for services. In other state owned facilities, the per diem rate will decrease resulting in a lower cost for patients who are 100 percent self-pay and uninsured.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed for services and treatments they rendered to self-pay patients.

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

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Residential services are funded primarily with restricted agency funds generated from patient charges.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation adjusts the charge rates as required by statute. Because only a small number of patients (those who have the resourced to be 100 percent self-pay and who are uninsured) will be required to pay the revised rates, it is anticipated that the revenue increase would be approximately \$14,000. Medicare, Medicaid and private insurance payors do not base their reimbursement on this billed amount, but on Medicare and Medicaid reimbursement requirements. And private insurers and MCOs are based on negotiated rates.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes, as required by law, charges for room, board, and treatment at state owned facilities. At some state owned facilities, the per diem rate will increase; at other facilities, the per diem rate will decrease. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) state owned facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720 (2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost associated with administering this regulation in subsequent years.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities owned by the state.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Administration and Financial Management
(Amendment)

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

RELATES TO: KRS Chapter 13B, 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 210.750 authorizes the Secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760. KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state~~operated or utilized by the Cabinet for Health and Family Services, for individuals with behavioral health, developmental and intellectual disabilities~~. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward the patient's~~their~~ care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

- (a) Salaries;
- (b) Wages;
- (c) Self-employed gross revenues, less operating expenses;
- (d) Benefit payments, except for Supplemental Security Income payments;
- (e) Social Security payments;
- (f) Rents;
- (g) Royalties;
- (h) Pensions;
- (i) Retirement payments;
- (j) Veteran's Administration payments;
- (k) Black lung benefits;
- (l) Railroad retirement benefits;
- (m) Gifts;
- (n) Settlements;
- (o) Trust receipts;
- (p) Alimony, but does not include child support payments;
- (q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "Patient or Responsible Party Financial Record" form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is~~deemed~~ able to pay calculated in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family, if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4.~~Dependents used in the calculation of the basic maintenance allowance shall include~~ A legally-recognized spouse and each individual less than eighteen (18) years of age who is[and] in the patient's care are classified as dependents for purposes of calculating the basic maintenance allowance.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed ~~instead~~~~[in-lieu]~~ of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction, if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

- (a) Prepaid burial plans of up to \$1,500 per family member;
- (b) Automobiles;
- (c) Housing structures;
- (d) Land;
- (e) Retirement accounts;
- (f) Pension funds;
- (g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and

~~(i)~~~~[(h)]~~ Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the "Ability to Pay Worksheet" or the "Deductible Ability to Pay Worksheet" as appropriate and by using the following formula:

- (a) Determine the total amount of income of the patient or person responsible for the patient;
- (b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;
- (c) Subtract the allowed deductions from income; and
- (d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

- (a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and
- (b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows, with the exception of ability to pay amounts arising from deductibles:

- (a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;
- (b) Any liability that remains after application of the average available income shall be satisfied by available assets; and
- (c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for individuals with mental ~~health~~~~[retardation]~~ or a developmental disability or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon ~~instead~~~~[in-lieu]~~ of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a "Patient or Responsible Party Financial Agreement and Assignment" form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the

form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective July 31, ~~2013~~~~[2014]~~ shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$11,490 [\$10,890]
2	\$15,510 [\$14,710]
3	\$19,530 [\$18,530]
4	\$23,550 [\$22,350]
5	\$27,570 [\$26,170]
6	\$31,590 [\$29,990]
7	\$35,610 [\$33,810]
8	\$39,630 [\$37,630]

*For each additional dependent, the facility shall add ~~\$4,020~~~~[\$3,820 dollars]~~.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, the facility shall add fifty (50) dollars.

(b) The poverty guidelines effective on the effective date of this administrative regulation shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$11,670 [\$11,490]
2	\$15,730 [\$15,510]
3	\$19,790 [\$19,530]
4	\$23,850 [\$23,550]
5	\$27,910 [\$27,570]
6	\$31,970 [\$31,590]
7	\$36,030 [\$35,610]
8	\$40,090 [\$39,630]

*For each additional dependent, the facility shall add ~~\$4,060~~~~[\$4,020 dollars]~~.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

*For each additional dependent, the facility shall add fifty (50) dollars.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions, including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "Ability to Pay Worksheet" or "Deductible Ability to Pay Worksheet" shall be prepared along with a revised "Patient or Responsible Party Financial Record" form and a revised "Patient or Responsible Party Financial Agreement and Assignment" form. The revised

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forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "Patient or Responsible Party Financial Agreement and Assignment" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures.

(1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request. If there is financial hardship, the patient billing supervisor shall allow minimum monthly payments based on what the patient can reasonably afford.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's₁ or person responsible for the patient's₁ position and shall include all relevant documentation supporting the claim of financial hardship[necessary supporting documentation].

(3) Waivers.

(a) The director of each facility may waive payment of ~~the~~_{his or her} facility's charges under this administrative regulation if waiver is ~~deemed to be~~ in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is ~~deemed to be~~ in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(c) When making a waiver determination, the following factors shall be considered:

1. Income;

2. Overall family debt;

3. Assets; and

4. Other information relating to the current financial situation of the patient or the person responsible for the patient.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DBHDID[MHMR] 3:060-1 Ability to Pay Worksheet", June 2008;

(b) "DBHDID[MHMR] 3:060-2 Deductible Ability to Pay

Worksheet", June 2008;

(c) "DBHDID[MHMR] 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", August 2004; and

(d) "DBHDID[MHMR] 3:060-4 Patient or Responsible Party Financial Record", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on September, 22, 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 September 15, 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 through September 30, 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, Ky. 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Paula DeWitt or Susan Walker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to adopt a "means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility owned or utilized by the state.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to establish a homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility owned or utilized by the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for individuals with behavioral health, developmental and intellectual disabilities operated or utilized by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update the Basic Maintenance Allowances table based on the most recent version of the Federal poverty guideline allowance amounts.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to revise tables related to benefit and support limits based on Federal poverty guidelines in order to accurately determine the ability to pay of the patient or person responsible for

the patient for board, maintenance, and treatment at a facility owned or utilized by the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for individuals with behavioral health, developmental and intellectual disabilities operated or utilized by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment to 908 KAR 3:060 allows the Cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifteen (15) state owned facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities owned by the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to their inability to pay. This administrative regulation will assure that state owned facilities equitably charge patients served. Increase in poverty guidelines factor into patient's liability to their benefit in allowable deductions.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is not an additional cost to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not increase fees to a patient or to the cabinet.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The fifteen (15) state owned facilities are 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 210.710, 210.728

(3). Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation allows facilities to assess and recoup costs associated with treatment and services.

(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? There is no cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is not a cost to administer this administrative regulation.

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

Revenues (+/-): No

Expenditures (+/-): No

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

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

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

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

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

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

(a) 921 KAR 3:020, Financial Requirements;

(b) 921 KAR 3:025, Technical Requirements;

(c) 921 KAR 3:030, Application Process; and

(d) 921 KAR 3:035, Certification Process.

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

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

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

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

(1) A fair hearing;

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

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

- (a) Is a Kentucky resident;
- (b) Is:
 - 1. A current SSI recipient; or
 - 2. SSI eligible, but SSI benefits are currently suspended;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:
 - 1. Single, widowed, divorced, or separated; or
 - 2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
 - (f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.
- (2) The cabinet shall use SDX to verify an applicant's marital and institutional status.
- (3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:
 - (a) Shall not be eligible for SAFE; and
 - (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.
- (4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.
- (5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

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

- (a) Identify SSI participants who are potentially eligible for SAFE; and
- (b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.
- (2) A SAFE application shall be considered filed if the SF-1 is:
 - (a) Signed; and
 - (b) Received at the Department for Community Based Services, Division of Family Support.
- (3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

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

- (2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.
- (3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.
- (4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.
- (5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

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

- (2) The standard SAFE benefit amounts shall be based on:
 - (a) Shelter costs;
 - (b) Household size; and
 - (c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A

household receiving SAFE benefits shall not be required to report any changes during the certification period.

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

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

- (a) Name;
- (b) Date of birth; or
- (c) Address.

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

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

- (a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 11/14[11/13]; and
- (b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 11/14[04/13].

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 7, 2014

FILED WITH LRC: August 11, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) program, a demonstration project administered by the cabinet to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for the SNAP which includes the SAFE demonstration project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of

the statutes by establishing the requirements for the SAFE program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by revising material incorporated by reference, form SF-1, Simplified Assistance for the Elderly (SAFE) Application, and form SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form, to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update the nondiscrimination statement included on incorporated material to conform to federal requirements. FNS revised the nondiscrimination statement in 2013. If federal requirements are not met, including conformity with nondiscrimination requirements, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by aligning with federal performance and practice requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with more adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SAFE recipients and potential applicants are affected by this administrative regulation. During June 2014, approximately 14,019 individuals, 12,250 in one (1) person and 1,769 in two (2) person households participated in SAFE 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 amendment to this administrative regulation will not require any additional actions on the part of SAFE program applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose any new or additional cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature. It is not projected to initially create new or additional costs for the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to create new or additional costs for the administrative body on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to amend this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as application of this policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. KRS 194A.050(1)

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years and will not generate any new or additional revenues in the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

VOLUME 41, NUMBER 3 – SEPTEMBER 1, 2014

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(24)(23), 605.090(1)(b), (d), 610.110, 2014 Ky. Acts ch. 117 Part 1, G. 9(7)[2008 Acts ch. 127 Part 1, H.10(3)], 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(24)(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation, which includes the following:

~~(a) DPP-886, Private Child Care Client Inter-agency Referral Form;~~

~~(b) DPP-886A, Application for Referral and Needs Assessment; and~~

~~(c) If a child has an IQ of seventy (70) or above:~~

~~1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or~~

~~2. Child Behavior Checklist For Ages 6-18; (Achenbach)].~~

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out;

2. Legal history, status, or delinquency behavior patterns;

(h) Out of home care placement information including:

1. Reason for entering out of home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Education;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4)(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency Referral Form, to the department;

(3) Reassess a child utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency; and

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. A level of care shall be assigned in accordance with the following standards:

(1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on ~~the~~Form DPP-888, Cost Report and Time Study and Instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one[-] (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a

private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I - fifty-one (51) dollars and nineteen (19) cents;

(b) Level II - sixty-one (61) dollars and fifty-two (52) cents;

(c) Level III - \$109.71;

(d) Level IV:

1. [-] \$151.03; or

2. \$175.87 on or after August 4, 2014; and

(e) Level V:

1. [-] \$210.64; or

2. \$218.99 on or after August 4, 2014.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) \$115.31 per day for a child-caring facility with a treatment license; or

(b) \$101.41 per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an

assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be:

(a) Forty-three (43) dollars; or

(b) Forty-four (44) dollars and eighty-two (82) cents on or after August 4, 2014.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher:

1. [-] Seventy-three (73) dollars; or

2. Seventy-six (76) dollars and ten (10) cents on or after August 4, 2014.

(b) Level III: [-]

1. Seventy nine (79) dollars and seventy-eight (78) cents; or

2. Eighty-three (83) dollars and sixteen (16) cents on or after August 4, 2014.

(c) Level IV: [-]

1. Ninety-seven (97) dollars and eleven (11) cents; or

2. \$101.23 on or after August 4, 2014.

(d) Level V:

1. [-] \$134.26; or

2. \$139.96 on or after August 4, 2014.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation~~forty-three (43) dollars per day,~~ for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ~~[above]~~ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation:

- a. ~~Child Behavior Checklist for Ages one and one-half (1 1/2)–five (5) (Achenbach); or~~
- b. ~~Child Behavior Checklist for Ages six (6)–eighteen (18) (Achenbach), every six (6) months~~; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

- a. Consisting of:
 - (i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or
 - (ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and
- b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP)~~[following completed forms]~~:

- a. On a quarterly basis, for a private child care residential placement~~[, CRP-001, Children's Review Program Residential Application for Level of Care Payment]~~; or
- b. On a semiannual basis for a foster care placement~~[, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment]~~;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

- 1. The Council on Accreditation; or
- 2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the

department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2~~[CRP-002]~~, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, ~~[form]~~ for a utilization review;

3. CRP-5~~[CRP-005]~~, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, ~~[form]~~ for a utilization review; or

4. CRP-6~~[CRP-006]~~, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, ~~[form]~~ for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4~~[CRP-004]~~, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4~~[CRP-004]~~, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4~~[CRP-004]~~, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4~~[CRP-004]~~, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation~~[If the child has an IQ of seventy (70) or above:~~

a. ~~Child Behavior Checklist For Ages one and one-half (1 1/2)–~~

five (5) (Achenbach); or

b. ~~Child Behavior Checklist for Ages six (6) – eighteen (18)]~~.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

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

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", [edition] 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", [edition] 6/01;

(c) "~~CRP-2~~"CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;

(d) "~~CRP-002~~", Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", 8/14[edition 11/04];

(d) "~~CRP-4~~"(e) "~~CRP-003~~, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;

(f) "~~CRP-004~~", Children's Review Program Notice of Level of Care Redetermination", 8/14[edition 11/04];

(e) [(g)] "~~CRP-5~~"CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 8/14[edition 11/04];

(f) [(h)] "~~CRP-6~~"CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", 8/14[edition 7/07];

(g) "~~CRP-7~~, Children's Review Program Application of Level of Care Payment (ALP)", 8/14;

(h) [(i)] "DPP-114, Level of Care Schedule", 8/14[edition 6/08];

(i) [(j)] "DPP-886, Private Child Care Client Inter-agency Referral Form", [edition] 10/04;

(j) [(k)] "~~DPP-886A~~, Application for Referral and Needs Assessment", edition 07/07;

(k) [(l)] "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", [edition] 10/04; and

(l) [(m)] "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", [edition] 1990.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 25, 2014

FILED WITH LRC: August 1, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275

East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility; a payment rate for each level; gatekeeper responsibilities; provider requirements; procedures for classification at the appropriate level of care; and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(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 increases the private residential child-caring facilities' and private child-placing agencies' foster care per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117), updates and streamlines incorporated materials, and makes technical clarifications to comply with KRS Chapter 13A and best practice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to increase private provider per diems in accordance with the state/executive branch budget bill enacted during the 2014 Regular Session (a.k.a. House Bill 235 or Ky. Acts ch.117) and to make updates and clarifications to incorporated materials with reviews and inputs solicited from the Children's Alliance and the Children's Review Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its increase to the private provider per diems to comply with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117). In addition, it makes updates and clarifies incorporated materials necessitated to actualize these

placement processes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its inclusion of enhanced private provider per diems in accordance with appropriations, improvements to incorporated materials, and other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2014, there were 7,778 children in the custody of the cabinet of which 930 are placed with private residential child-caring facilities with levels of care IV and V. There are an additional 2,971 children placed with private child placing agencies in either basic foster care or levels I through V. There are presently forty-seven (47) private residential child caring and ninety-four (94) private child-placing licensed locations that have an existing agreement with the cabinet for out-of-home care services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Required incorporated materials have been updated to reflect best practice and aid in the determination of an appropriate level of care reimbursement rate for children.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with House Bill 235 from the 2014 General Assembly (Ky. Acts ch. 117), private residential child-caring facilities will realize a twenty-four (24) dollar and eighty-four (84) cent reimbursement increase for children with a level of care IV and an eight (8) dollar and thirty-five (35) cent increase for children with a level of care V. Private child-placing agencies will realize per diem increases ranging from one (1) dollar and eighty-two (82) cents to five (5) dollars and seventy (70) cents for foster care services.

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

(a) Initially: The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be used as match for other fund sources. DCBS estimates an overall cost increase of \$9.5 million in state general, federal, and restricted funds for the first year.

(b) On a continuing basis: The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, restricted funds derived from Medicaid, federal Temporary Assistance for Needy Families Block Grant, and state funds are the sources of funding for 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: An increase in funding was provided to the cabinet through House Bill 235 of the 2014 General Assembly (Ky. Acts ch. 117).

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 622, 672, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. State funds appropriated will be match for other fund sources. DCBS estimates an overall cost increase of \$9.5 million in state general, federal, and restricted funds for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain services and a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS[84.040,] 194A.060, 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(49), 605.120(5), 620.020(10), 2014 Ky. Acts ch. 117, Part 1, G.9(3), 7 C.F.R. 1463,

2012, 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 10602(c)[, Pub.L. 110-246]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home":

- (a) Is defined by KRS 199.894(5);
- (b) Is described in KRS 199.8982; and
- (c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

- (a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner;

(d) Qualified mental health professional as defined by KRS 600.020(49); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian;

(b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(16) "Infant" means a child who is less than one (1) year old.

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

~~(18) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).~~

~~(19) "Parent" is defined by 45 C.F.R. 98.2.~~

~~(19)(20) "Part day" means child care that is provided for less than five (5) hours per day.~~

~~(20)(21) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.~~

~~(21)(22) "Preventive services" is defined by KRS 620.020(10).~~

~~(22)(23) "Provider" means the entity providing child care services.~~

~~(23)(24) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).~~

~~(24)(25) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.~~

~~(25)(26) "Related" means having one (1) of the following relationships:~~

- ~~(a) Child;~~
- ~~(b) Stepchild;~~
- ~~(c) Grandchild;~~
- ~~(d) Great-grandchild;~~
- ~~(e) Niece;~~
- ~~(f) Nephew;~~
- ~~(g) Sibling;~~
- ~~(h) Child in legal custody; or~~
- ~~(i) Child living in loco parentis.~~

~~(26)(27) "Responsible adult" means a person other than the applicant who is in the child's household and who is:~~

- ~~(a) The natural parent, adoptive parent, or stepparent; or~~
- ~~(b) The spouse of an individual caring for a child in loco parentis.~~

~~(27)(28) "School-age child" means a child who has reached the sixth birthday.~~

~~(28) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:~~

- ~~(a) Defined by 7 U.S.C. 2012; and~~
- ~~(b) Governed by 921 KAR Chapter 3.~~

~~(29) "Teenage parent" means a parent who is nineteen (19) years of age or younger.~~

~~(30) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday. (31) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.]~~

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. A signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance, is received at the cabinet or its designee office; or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
 - b. Needs special accommodation due to the impairment.
- (b) If the applicant is physically unable to come to the office to

apply, the applicant may designate an authorized representative to make application.

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care[child-care] center;

b. Certified child-care[child-care] home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply

with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP[~~food stamp assistance~~] case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care[An alternative program such as Head Start, state preschool, or state kindergarten]; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7[(4)]; or

(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 6. Kentucky Works Child Care Eligibility Determination.

(1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)(a) ~~Prior to July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:~~

~~1. 150 percent of the federal poverty level at the initial application; or~~

~~2. 165 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

~~(b) Effective July 1, 2013, a child shall be eligible for the CCAP if the family's income is less than or equal to:~~

~~1. 100 percent of the federal poverty level at the initial application; or~~

~~2. 100 percent of the federal poverty level at the redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

~~(b) On or after August 4, 2014, a child shall be eligible for the CCAP if the family's income is less than or equal to 140 percent of the 2011 federal poverty level at:~~

~~1. Initial application; or~~

~~2. Redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

~~(c) On or after July 1, 2015, a child shall be eligible for the CCAP if the family's income is less than or equal to:~~

~~1. 150 percent of the 2011 federal poverty level at initial application; or~~

~~2. 165 percent of the 2011 federal poverty level at redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.~~

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family's income remains less than or equal to:

~~(a) 165 percent of the federal poverty level prior to July 1, 2013; or~~

~~(b) 100 percent of the federal poverty level effective July 1, 2013;~~

~~(b) 140 percent of the 2011 federal poverty level on or after August 4, 2014; or~~

~~(c) 165 percent of the 2011 federal poverty level on or after July 1, 2015.~~

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(5) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP ~~the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program);~~

~~a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and~~

~~b. Governed by Title 921 KAR Chapter 3;~~

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;
2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;
3. A monthly amount shall be determined by:
 - a. Adding gross income from each pay period;
 - b. Dividing by the total number of pay periods considered; and
 - c. Converting the pay period figure to a monthly figure by multiplying a:
 - (i) Weekly amount by 4.334;
 - (ii) Biweekly amount by 2.167; or
 - (iii) Semimonthly amount by two (2); and
4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:
 - a. Multiplying the:
 - (i) Hourly rate by the estimated number of hours to be worked in a pay period; or
 - (ii) Daily rate by the estimated number of days to be worked in the pay period; and
 - b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph.
 - c. For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
 1. Not rounding cents at any step in the calculation;
 2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
 3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.
 - d. For a case with self-employment income, a monthly amount

shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;
2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
4. Profit shall be determined by:
 - a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:
 - (i) Twelve (12) if the enterprise has been in operation for at least a year; or
 - (ii) The number of months the business has been operating if the business has been in existence for less than a year; and
 - b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined at least every:

- (a) Twelve (12) months; or
 - (b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.
- (2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.
- (3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. ~~Urban;~~
4. ~~Nonurban;~~
5. ~~Licensed;~~
4. ~~6.] Certified;~~
5. ~~7.] Registered;~~
6. ~~8.] Infant/Toddler;~~
7. ~~9.] Preschool child; and~~
8. ~~10.] School-age child.~~

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education of Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19), and

is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the

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general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of

this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day									
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay		
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more	
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2	
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3	
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3	
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3	
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4	
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4	
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5	
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6	
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7	
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8	
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9	
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9	
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10	
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10	
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10	
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11	
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11	
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13	
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14	
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15	
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17	
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19	
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25	
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25	

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;

2. The closure of a provider;
 3. Family circumstances, such as relocation, illness, or death;
- or
4. A risk to the health, welfare, or safety of the child or parent.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a child care certificate, the DCC-94.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of

this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:
 - a. Copayment;
 - b. Certification period; or
 - c. Household size;
2. Approval of:
 - a. Application; or
 - b. Continued eligibility; or
3. Adverse action, including:
 - a. Denial of application;
 - b. Reduction of CCAP benefits; or
 - c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:[]

1. Reason for the adverse action;
2. Citation from an applicable state administrative regulation; and

3. Information regarding the:

- a. Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and
- b. Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

- (a) A disaster verified by utility provider, local, state, or federal government;
- (b) Closure of a provider;
- (c) Family circumstances, such as relocation, illness, or death;
- (d) A risk to the health, welfare, or safety of the child or the applicant; or

(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.

(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(8) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(9) Failure to report a change in a circumstance may result in a:

- (a) Decrease or discontinuance of CCAP benefits based on the type of change; or
- (b) Claim in accordance with 922 KAR 2:020.
- (10) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:
 - (a) Discontinued from CCAP benefits; and
 - (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(11) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

- (a) Be used for child care assistance provided by a licensed, certified, or registered provider; and
- (b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory

requirements pursuant to:

- (a) 922 KAR 2:090, Child care center licensure;
- (b) 922 KAR 2:100, Certification of family child care homes;
- (c) 922 KAR 2:110, Child care facility provider requirements;
- (d) 922 KAR 2:120, Child care facility health and safety standards;
- (e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
- (f) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and
- (g) 922 KAR 2:190, Civil penalties.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The cabinet shall send a[DCC-105 providing] notice of adverse action[in accordance with Section 11(5) of this administrative regulation,] ten (10) calendar days in advance of this adverse action.

(7) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

- (a) Child protective or preventive services authorization;
- (b) A child with a special need;
- (c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;
- (d) Teen parents attending high school or pursuing a general equivalency degree (GED);
- (e) A K-TAP recipient attempting to transition off assistance through employment;
- (f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;
- (g) A low income working parent; or
- (h) A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

- (a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;
- (b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;
- (c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is[daily arrival and departure times of each child have been]:
 - a. Recorded legibly each time the child arrives and each time the child departs the provider's care[on a daily basis]; and
 - b. Signed by the parent or applicant for the child served by CCAP; and
2. Submit the DCC-94E upon request of the cabinet or its designee;[and]
- (d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:090, Child care center licensure;
2. 922 KAR 2:100, Certification of family child care homes;
3. 922 KAR 2:110, Child care facility provider requirements;
4. 922 KAR 2:120, Child care facility health and safety standards;
5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
6. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties; and
7. 922 KAR 2:190, Civil penalties; and
- (e) Complete the cabinet approved training on billing and the DCC-94E:

1. Prior to receiving an initial payment from CCAP if the provider will begin participation in CCAP after the effective date of this administrative regulation; or
2. By August 4, 2015, if the provider began participation in CCAP prior to the effective date of this administrative regulation.

(2) A licensed or certified child care provider shall complete

and submit the DCC-94B, Licensed or Certified Provider Agreement[Information] Form, prior to receiving payment from the CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;
2. The work hours for each employee of each shift;
3. The management for each shift;
4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve an operating plan that demonstrates the health, safety, and welfare of a child in care in accordance with this administrative regulation and an administrative regulation listed in subsection (1)(d) of this section.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:
 - a. Child; or
 - b. Applicant; or
3. A Disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

- a. Cabinet review, including CCAP quality control or case

review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;[or]

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(5) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(7)[(8)] of this administrative regulation.

Section 17. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18 of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18. Administrative Hearings. An administrative hearing may be requested in accordance with:

(1) 922 KAR 1:320; or

(2) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "DCC-90, Application for Subsidized Child Care Assistance", [edition] 11/09;
- (b) "DCC-90.1, Intent to Apply for Child Care Assistance", [edition] 11/09.
- (c) "DCC-91, Client Rights and Responsibilities Sheet", [edition] 04/13;
- (d) "DCC-94, Child Care Service Agreement and Certificate", [edition] 11/09;
- (e) "DCC-94B, Licensed or Certified Provider Agreement[Information] Form", 7/14[edition 7/13];
- (f) "DCC-94E, Child Care Daily Attendance Record[Records]", [edition] 7/13;
- (g) "DCC-97, Provider Billing Form", [edition] 04/13;
- (h) "DCC-105, Child Care Assistance Program Notice of Action", [edition] 11/09; and
- (i) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", 7/14[edition 11/09].

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 25, 2014

FILED WITH LRC: August 1, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases the CCAP income eligibility criteria, specifically the federal poverty level, in accordance with available revenues, including the restoration of CCAP authorized by 2014 Ky. Acts ch. 117. In addition, the amendment delinks child care provider payment rates from the classification of cities, reinforces quality within CCAP, and makes technical corrections and clarifications in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to restore CCAP to a higher service level in response to 2014 Ky. Acts ch. 117, state budgetary context, and to protect and preserve provider rates from fluctuations that would otherwise be created by changes to city classifications. In addition, the administrative regulation is necessary to assure quality and compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by restoring CCAP in accordance with available federal and state funding and assuring stable child care provider payment rates and quality within CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring CCAP operates within available funding and quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of the third quarter of State Fiscal Year 2014, CCAP has served an average of 30,245 children in 16,670 families per month. For State Fiscal Year 2014, the numbers of providers participating in CCAP are as follows: 1,388 licensed (Type I and Type II), 208 certified, and 313 registered.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will make quality child care more accessible for low-income working households.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation imposes no direct cost to applicants and recipients of CCAP and their providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Low-income working households will have improved access to quality child care.

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

(a) Initially: Funds to restore CCAP were appropriated in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues.

(b) On a continuing basis: Funds to restore CCAP were appropriate in 2014 Ky. Acts ch.117. Changes contained in this amendment are within available revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation are federal Child Care and Development Fund Block Grant, state matching, state maintenance of effort funds, 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: An increase in funding for CCAP was provided in 2014 Ky. Acts ch. 117.

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

The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. Provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. While this administrative regulation protects and preserves the current provider payment rates by delinking the rates from the classification of cities, the provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98
2. State compliance standards. KRS 194A.050, 199.892, 199.8994
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 42 U.S.C. 601-619, 45 C.F.R. 98
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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.
 - (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 directly generate any new revenue for subsequent years.
 - (c) How much will it cost to administer this program for the first year? The restoration of CCAP is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state revenues.
 - (d) How much will it cost to administer this program for subsequent years? The restoration of CCAP, as proposed within this amendment, is supported through funds appropriated in 2014 Ky. Acts ch. 117. The restoration as proposed within this amendment is projected to fall within available federal and state

revenues. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, Chapter 209[209.005—209.200], 202A.051, 202B.100, 387.540(1), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caretaker" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Employee" is defined by KRS 209.032(1)(a).

(7) "Exploitation" is defined by KRS 209.020(9).

(8)[(7)] "Investigation" is defined by KRS 209.020(10).

(9)[(8)] "Neglect" is defined by KRS 209.020(16).

(10)[(9)] "Protective services" is defined by KRS 209.020(5).

(11)[(40)] "Records" is defined by KRS 209.020(15).

(12) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(13) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

(a) Community resources;

(b) General adult services in accordance with 922 KAR 5:090; or

(c) Domestic violence protective services in accordance with 922 KAR 5:102.

(6) Upon accepting a report for investigation of alleged adult

abuse, neglect, or exploitation, the cabinet shall:

(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and

(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse, as defined in KRS 209.020(8), if the report alleges:

1. Marks that are or have been observed on an adult that another individual allegedly inflicted;

2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;

3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or

4. An act of sexual abuse;

(b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:

a. An act or omission by a caretaker; or

b. The absence of a caretaker;

2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;

3. Food neglect, if an adult shows symptoms of:

a. Malnutrition;

b. Dehydration;

c. Food poisoning; or

d. Lack of adequate food for a period of time that:

(i) Results in physical symptoms; or

(ii) Requires treatment;

4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or

5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:

a. Results in an observable decline in the adult's health and welfare;

b. May be life threatening; or

c. May result in permanent impairment;

(c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:

1. Isolation from friends, relatives, or important information, such as:

a. Screening telephone calls;

b. Denying visitors; or

c. Intercepting mail;

2. Physical or emotional dependency;

3. Manipulation;

4. Acquiescence; and

5. Loss of resources; or

(d) An adult in need of protective services as defined in KRS 209.020(5).

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:

(a) The report does not meet the statutory definitions of:

1. Adult; and

2.a. Abuse;

b. Neglect; or

c. Exploitation; or

(b) There is insufficient information to:

1. Identify or locate the adult; or

2. Explore leads to identify or locate the adult.

(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):

~~(a) Prepare an intake report on the "DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting~~

~~Form"; and~~

~~(b) Submit the DPP-115;~~

~~4.-] For a determination of investigation assignment by cabinet supervisory staff;~~

~~(b)[2.-] To the local guardianship office, if the adult is a state guardianship client; and~~

~~(c)[3.-] To appropriate authorized agencies, as specified in KRS 209.030(5).~~

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

(a) An emergency~~[as defined in KRS 209.020(11)]~~, the investigation shall be initiated within one (1) hour; or

(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies; and

2. Individual may be required to testify in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4)[The DPP-115]; and

(b) A narrative documenting:

1. The investigation; and
2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b) 1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry governed by 922 KAR 5:120.

Section 7. Opening a Case. (1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.110.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8[7]. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or

exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9[8]. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10[9]. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

(a) Manage personal affairs;

(b) Manage financial affairs; or

(c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11[40]. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

(a) The adult lacks the capacity to consent or refuses mental health treatment;

(b) Other resources are not available;

(c) Another petitioner is absent or unavailable; and

(d) Prior cabinet supervisory approval is obtained.

Section 12[14]. Reporting. (1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

(a) Use in future investigations; and

(b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;

2. Demographics;

3. Type of abuse;

4. The number of:

a. Accepted reports; and

b. Substantiated reports; and

5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13[12]. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in

accordance with Section 14[43] of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14[43]. Appeal Rights. (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

~~(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the employee shall receive appeals in accordance with 922 KAR 5:120[Section 14. Incorporation by Reference. (1) "DPP-115, Confidential Suspected Abuse/Neglect, Dependency, or Exploitation Reporting Form", edition 9/05, is incorporated by reference.~~

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2014

FILED WITH LRC: July 23, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for adult protective services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing cabinet procedures for intake and acceptance of reports alleging adult abuse, neglect, and exploitation and related services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for the protection of adults.

(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 aligns adult protective services with the caregiver misconduct registry established by Senate Bill 98 from the 2014 Regular Session and associated administrative regulation. In addition, the amendment removes the DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form, through exclusive reference to KRS 209.030, which establishes the information to be obtained from a reporting source. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for congruency with the caregiver misconduct registry newly authorized by KRS 209.032 and governed by 922 KAR 5:120. The amendment is also necessary for conformity with applicable statutes and the requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update of adult protective services policy and procedures in accordance with the registry newly authorized by KRS 209.032 (from the 2014 Regular Session).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes through its alignment with recently enacted legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for an adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS 209.032, specifically due process, are met.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an alleged perpetrator may qualify for addition to the caregiver misconduct registry contingent upon other criteria established by KRS 209.032, this administrative regulation, and 922 KAR 5:120, this administrative regulation outlines notification rights to the alleged perpetrator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will not incur a new or additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual who is an employee or is acting with the expectation of compensation will be provided notification of the investigation and requirements of KRS 209.032 prior to the individual being added to the caregiver misconduct registry. The registry affords additional protections to adults, while protecting the due process rights of the alleged perpetrators.

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

(a) Initially: The administrative body projects any costs associated with the implementation of this administrative regulation will be within existing appropriations.

(b) On a continuing basis: The administrative body anticipates any ongoing costs associated with this regulatory amendment will be within future appropriations.

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

The implementation and enforcement of this administrative regulation are supported through state general funds and federal funds available through the Social Services Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1397

2. State compliance standards. KRS 194A.050(1), 209.030(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.030(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations 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:

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 3:030. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address.

RELATES TO: KRS 117A.040

STATUTORY AUTHORITY: KRS 117A.040(2), 117A.030(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117A.040(2) requires the Secretary of State to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. This administrative regulation covers the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

Section 1. Definition. "Overseas voter" is defined by KRS 117A.010(6).

Section 2. Voting Precinct and Address of Overseas Voter Whose Last Place of Residence in the Commonwealth is No Longer a Recognized Residential Address. If the last place of residence in the Commonwealth of Kentucky of an overseas voter who is eligible to vote in the Commonwealth, or the parent or legal guardian of a voter described by KRS 117A.010(1)(e), is no longer a recognized residential address, the county clerk shall:

(1) In consultation with federal, state and local government agencies, as necessary, determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential address; and

(2) Designate the voter's residential address in the statewide voter registration database as "Overseas."

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: July 22, 2014

FILED WITH LRC: July 22, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2014, at 9:00 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 available 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 end of the calendar day, September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky

40601, phone (502) 564-3490, fax (502) 564-5687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117A.040(2) requires the Secretary of State to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. This administrative regulation covers the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to cover the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117A.040(2) requires the Secretary of State to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. This administrative regulation conforms to the content of the authorizing statutes by covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117A.040(2) requires the Secretary of State to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) permits the Secretary of State to delegate to the State Board of Elections the responsibility for the promulgation of administrative regulations necessary to implement KRS Chapter 117A. The Secretary of State has delegated to the State Board of Elections the responsibility to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. This administrative regulation assists in the effective administration of the statutes by covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

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

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

(b) The necessity of the amendment to this administrative

regulation: This is a new administrative regulation.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect an unknown number of overseas voters whose last place of residence in the Commonwealth of Kentucky, or in the case of a voter described by KRS 117A.010(1)(e), the last place of residence in the Commonwealth of Kentucky of the voter's parent or legal guardian, is no longer a recognized residential address; the State Board of Elections; and county clerks.

(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: Overseas voters whose last place of residence in the Commonwealth of Kentucky, or in the case of a voter described by KRS 117A.010(1)(e), the last place of residence in the Commonwealth of Kentucky of the voter's parent or legal guardian, is no longer a recognized residential address will not be required to take any action to comply with this administrative regulation but will be able to register to vote in Kentucky using an address assigned for voting purposes that is in the same voting precinct as the voter's, or in the case of a voter described by KRS 117A.010(1)(e), or the voter's parent or legal guardian's, last place of residence would have been located if the address were still a recognized residential address. The State Board of Elections and county clerks will be required to consult as necessary to determine the voting precinct in which the voter or the voter's parent or legal guardian's last place of residence would have been located if the address were still a recognized residential address.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Voters are assigned to voting precincts based on their residential addresses. In some instances, overseas voters are eligible to vote in Kentucky, but their last place of residence, or in the case of a voter described by KRS 117A.010(1)(e), the last place of residence of the voter's parent or legal guardian, in the Commonwealth of Kentucky is no longer a recognized residential address. By complying with this regulation, overseas voters whose last place of residence in the Commonwealth of Kentucky, or in the case of a voter described by KRS 117A.010(1)(e), the last place of residence in the Commonwealth of Kentucky of the voter's parent or legal guardian, is no longer a recognized residential address will be able to be assigned to a voting precinct and register to vote in Kentucky. The State Board of Elections and county clerks have an interest in ensuring that all eligible Kentuckians are able to exercise the right to vote, and compliance with this administrative regulation furthers that interest by enabling overseas voters eligible to vote in Kentucky but whose last place of residence, or the last place of residence of the voter's parent or legal guardian, in the Commonwealth of Kentucky is no longer a recognized residential address to register to vote in Kentucky.

(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: No funding is necessary to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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, either directly or indirectly, any increased fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the State Board of Elections and county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117A.040(2).

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state and local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state and local governments 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 (+/-):

FINANCE AND ADMINISTRATION CABINET Commonwealth Office of Technology (New Administrative Regulation)

200 KAR 1:015. Data Breach Notification Forms.

RELATES TO: KRS 61.932, 61.933

STATUTORY AUTHORITY: KRS 42.726(2)(b), 61.932, 61.933

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT") to promulgate administrative regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to prescribe forms necessary for notification by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency has occurred. KRS 61.932 specifically authorizes COT to prescribe forms when law enforcement agencies have requested a delay of notification to allow for investigation of the suspected or determined breach. This administrative regulation establishes the required forms for notification of a suspected or determined breach of personal information or a request to delay notification by law enforcement.

Section 1. Administrative - Required Forms. (1) Finance Form FAC-001, Suspected and Determined Breach Notification Form, shall be completed by a state agency or nonaffiliated third party to notify the agency for whom it maintains or otherwise possesses personal information regarding a suspected or determined breach in data.

(2) Finance Form FAC-002, Delay Notification Record, shall be completed by a state agency or nonaffiliated third party when a law enforcement agency has requested a delay of notification to allow for investigation of the suspected or determined breach.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Finance Form FAC-001, "Suspected and Determined Breach Notification Form," August, 2014; and

(b) Finance Form FAC-002, "Delay Notification Record," August, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commonwealth Office of Technology, 101 Cold Harbor Drive, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 5 p.m., and on the Finance and Administration Cabinet Web site, <http://finance.ky.gov/Pages/default.aspx>.

STEVE RUCKER, Deputy Secretary

APPROVED BY AGENCY: August 14, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 from 10:00a.m. to 12:00p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 702 Capitol Avenue, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hendrix

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT"), to promulgate regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to prescribe forms necessary for notification by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency has occurred. KRS 61.932 specifically authorizes COT to prescribe forms necessary and when law enforcement agencies have requested a delay on notification to allow for investigation of the suspected or determined breach. This regulation prescribes those forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for COT to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation, as well as the specific directives of KRS 61.932 and KRS 61.933.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.932 and KRS 61.933

specifically direct COT to prescribe these forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The forms prescribed herein will provide necessary notice to agencies, law enforcement, the Auditor of Public Accounts and the Attorney General as required by House Bill 5 of the 2014 Regular Session of the General Assembly.

(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: All state agencies or private entities (identified as nonaffiliated third parties) which maintain or otherwise possess personal information for state agencies.

(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: Affected entities must complete the necessary forms when they suspect or determine that a breach of personal information has occurred.

(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 a minimal cost to complete the forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will comply with the requirements of KRS 61.931-934.

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

(a) Initially: COT will not incur any initial costs as the result of this regulation.

(b) On a continuing basis: COT will not incur any additional costs as the result of this regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation because all entities which possess personal information, whether public or private, will be treated similarly under the proposed regulation and forms.

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? No local government entities will be affected but COT and any state agency which suspects or experiences a breach of personal information.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.726; KRS 61.932; KRS 61.933.

(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 cost.

(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 (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(New Administrative Regulation)**

201 KAR 5:055. Telehealth.

RELATES TO: KRS 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes these requirements.

Section 1. Definitions. (1) "Contact lens prescription" is defined by KRS 367.680(3).

(2) "Eye examination" is defined by 201 KAR 5:040, Section 7(1)(a).

(3) "Face to face" means in person and not via telehealth.

(4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).

(5) "Optometrist" means an individual licensed by the Kentucky Board of Optometric Examiners as defined by KRS 320.210(2).

(6) "Patient" means the person receiving services or items from an optometrist or a physician.

(7) "Physician" means an individual licensed by the Kentucky Board of Medical Licensure as defined by KRS 311.550(12).

(8) "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.

(9) "Prescription for eyewear" means a written prescription for visual aid glasses or contact lenses after a complete eye examination is performed by an optometrist or physician.

(10) "Telehealth" is defined by KRS 320.390(3).

(11) "Telehealth provider" means an optometrist or physician who performs a telehealth consultation.

(12) "Telepractice" means the practice of optometry as defined in KRS Chapter 320 that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

(13) "Visual aid glasses" is defined by KRS 320.210(4).

Section 2. Patient Identity, Communication and Informed Consent Requirements. (1) An optometrist-patient relationship shall not commence via telehealth.

(2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.

(3) An optometrist who uses telehealth to deliver vision or eye

care services shall at the initial, face-to-face meeting with the patient:

(a) Verify the identity of the patient;

(b) Establish a medical history and permanent record for the patient;

(c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;

(d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;

(e) Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on call telephone number;

(f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and

(g) Inform the patient in writing and document acknowledgement of the risk and limitations of:

1. The use of technology in the use of telepractice;

2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;

3. The potential disruption of technology in the use of telepractice;

4. When and how the optometrist will respond to routine electronic messages;

5. The circumstances in which the optometrist will use alternative communications for emergency purposes;

6. Who else may have access to patient communications with the optometrist;

7. How communications shall be directed to a specific optometrist;

8. How the optometrist stores electronic communications from the patient; and

9. Whether the optometrist may elect to discontinue the provision of services through telehealth.

Section 3. Jurisdictional Considerations. A person providing eye and vision services via telehealth:

(1) Shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if, at the time services are provided, the services are provided:

(a) To a person physically located in Kentucky; or

(b) By a person who is physically located in Kentucky; and

(2) May be subject to licensure requirements in other states where the services are received by the client.

Section 4. Representation of Services and Code of Conduct.

(1) A telehealth provider shall not engage in false, misleading, or deceptive advertising. A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1)(a) are met. A person shall not purport to write a prescription for visual aid glasses or contact lenses solely by using an autorefractor or other automated testing device.

(2) Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for visual aid glasses via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for visual aid glasses based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.

(3) Prescriptions for controlled substances shall not be made via telehealth.

(4) A telehealth provider shall:

(a) Not split fees in accordance with KRS 320.300(3);

(b) Shall maintain a medical record of a service or item provided to a patient via telepractice;

(c) Document the patient's presenting problem, purpose, or diagnosis and include which services were provided by telepractice;

(d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications;

and

(e) Dispense visual aids only in accordance with KRS 320.300(1).

Section 5. Utilization of Telehealth in Provision of Continuing Education. Educational presentations are permitted via telehealth in accordance with 201 KAR 5:030.

JERALD COMBS, President

APPROVED BY AGENCY: August 14, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 4:00 p.m. ET on September 26, 2014 at the office of the Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 19, 2014, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and processes for telehealth.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS Chapter 320.390(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 320.390(2) requires the Board to promulgate an administrative regulation on telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will establish and codify standards and processes for telehealth.

(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: Not applicable since this is a new regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that approximately 780 optometrists may annually utilize telehealth in the course of treating patients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All licensees that utilize telehealth will be subject to the standards enumerated in the 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 additional practice costs are anticipated to comply with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to provide service flexibility through providing services remotely.

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

(a) Initially: There are no initial projected costs to implement this administrative regulation.

(b) On a continuing basis: There are no continuing projected costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for implementation of the administrative regulation. Any violations of the administrative regulation may subject a licensee to disciplinary action, which is funded by fees paid to the Board.

(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: Implementation of this new administrative regulation is not dependent on an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees who utilize telehealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.390(2) authorizes 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. The Board anticipates no fiscal effect on its expenditures and revenues for the first year the administrative regulation is 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 new revenue for the Board in the first year.

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

(c) How much will it cost to administer this program for the first year? The Board anticipates no cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Board anticipates no cost to administer this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact is anticipated.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Repealer)

703 KAR 5:122. Repeal of 703 KAR 5:120 and 703 KAR 5:180.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.782, 158.805, 160.346

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455, 160.346(1)(a), (9)

NECESSITY, FUNCTION, AND CONFORMITY: Section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended, (Title I or ESEA) requires the KBE to identify the state's lowest-achieving schools (referenced in KRS 160.346 as "persistently low-achieving schools") as "priority schools", and for those priority schools to follow the requirements of 20 U.S.C. 6303(g) regarding school intervention options. It is necessary to repeal 703 KAR 5:120, Assistance for schools; guidelines for scholastic audit, and 703 KAR 5:180, Intervention system for persistently low-achieving schools, as they are no longer consistent with current state and federal accountability requirements. 703 KAR 5:260 has been promulgated to establish the new requirements for implementing the intervention options in priority schools and districts. This administrative regulation repeals 703 KAR 5:120 and 703 KAR 5:180.

Section 1. The following administrative regulations are hereby repealed:

(1) 703 KAR 5:120, Assistance for schools; guidelines for scholastic audit; and

(2) 703 KAR 5:180, Intervention system for persistently low-achieving schools.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D.

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 29, 2014, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 703 KAR 5:120 which established education assistance and scholastic audit processes for low-performing schools to implement an accountability system that is

no longer in use. It also repeals 703 KAR 5:180 which established the process and procedures for implementing those interventions and alternate governance options. In order to receive approval of Kentucky's Elementary and Secondary Education Act (ESEA) Flexibility Waiver, the agency is now required to identify persistently low-achieving schools as priority schools. The agency is promulgating a new administrative regulation to establish the intervention processes for priority schools and districts.

(b) The necessity of this administrative regulation: This administrative regulation repeals two administrative regulations that are no longer needed because a new administrative regulation is being put in place which will outline the intervention process required for priority schools and districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation repeals two administrative regulations that are no longer required due to the promulgation of a new administrative regulation to implement the requirements of KRS 160.346 and Kentucky's ESEA Flexibility Waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations will permit the promulgation of a new administrative regulation which will outline the intervention process for priority schools and districts.

(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: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statute: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will only apply to a limited number of schools and districts: 1) schools that have been or may be identified as one of Kentucky's priority schools (low-achieving schools that states are required to identify for Kentucky's ESEA Flexibility Waiver) 2) the districts containing the priority schools and 3) priority districts as defined in the regulation. It will also impact school councils of the above schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The schools and districts will no longer have to undergo the process contained in the administrative regulations being repealed, but will instead follow a similar process set forth in a new 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: The schools and districts will not have to undertake activities related to the repeal of the two administrative regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will no longer be required to comply with the requirements of the repealed administrative regulations.

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

(a) Initially: No additional costs

(b) On a continuing basis: No additional costs

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

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulations are being repealed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will apply to a subset of all schools and districts, including: 1) schools that have been or may be identified as one of Kentucky's priority school (low-achieving schools states are required to identify for Kentucky's Elementary and Secondary Education Act (ESEA) Flexibility Waiver) 2) the districts containing the priority schools and 3) priority districts as defined in the administrative regulation. It will also impact school councils of the above schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 160.346, Kentucky's ESEA Flexibility Waiver

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated or expenditures required 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? None.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

703 KAR 5:260. Implementation of intervention options in priority schools and districts.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) indicates the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.6453(3)(a) vests in the KBE the responsibility to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal

Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and districts, and to establish appropriate consequences for schools failing to meet their accountability measures. KRS 160.346 requires the KBE to promulgate administrative regulations to establish the process for implementing school interventions and alternate management options for schools, districts, and the state for persistently low-achieving schools, now identified as priority schools. Section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended, (Title I or ESEA) requires the KBE to identify the state's lowest-achieving schools (referenced in KRS 160.346 as "persistently low-achieving schools") as "priority schools", and for those priority schools to follow the requirements of 20 U.S.C. 6303(g) regarding school intervention options. This administrative regulation establishes the process and procedures for implementing school interventions and alternate governance options for priority schools and districts.

Section 1. Definitions. (1) "Annual measurable objective" or "AMO" means the improvement goal for each school or district calculated from the overall score.

(2) "Diagnostic review process" means the review and audit process required under KRS 158.6455 and 160.346 to establish appropriate consequences for districts containing priority schools, priority districts, and priority schools.

(3) "Diagnostic review team" means an audit team approved by the Commissioner of Education or his or her designee to conduct a school or district diagnostic review required by KRS 160.346.

(4) "District diagnostic review" means an assessment of the functioning of the district and of the district's ability to manage an intervention in a priority school and meets the requirements of KRS 160.346(3)(b).

(5) "District that contains a priority school" means a district that has not been identified as a priority district but that has in its jurisdiction one (1) or more priority schools.

(6) "Persistently low-achieving school" is defined by KRS 160.346(1)(a).

(7) "Priority district" is defined by 703 KAR 5:225, Section 1(21).

(8) "Priority school" is defined by 703 KAR 5:225, Section 1(22).

(9) "School diagnostic review" is described in KRS 160.346, and means an assessment of the functioning of the school, and meets the requirements of KRS 160.346(3)(a).

(10) "School intervention" is defined by KRS 160.346(1)(b).

Section 2. Diagnostic Review Team Selection and Membership. (1)(a) Members of the diagnostic review team shall be selected from qualified applicants by the department, and approved by the Commissioner of Education or his or her designee.

(b) The team members shall complete department-provided or approved training in any areas needed to effectively perform their duties.

(c) Members shall hold appropriate certification or qualifications for the position being represented.

(d) The team shall not include any members currently employed by the district or school under review.

(2) The team shall be approved by the Commissioner of Education or his or her designee and shall include the following representation:

(a) The chairperson, who shall be designated by the department or its designee, and shall be:

1. A certified administrator approved by the department to provide highly skilled education assistance as required by KRS 158.782;

2. A certified administrator member of the review team; or

3. A similarly qualified professional approved by the department;

(b) An individual approved by the department to provide highly skilled education assistance as required by KRS 158.782;

(c) A teacher who is actively teaching or has taught within the

last three (3) years;

(d) A principal who is currently serving or has served as a principal within the last three (3) years;

(e) A district level administrator who is currently serving or has served in a district administrative position within the last three (3) years;

(f) A parent or legal guardian who has or has had a school-aged child; and

(g) A university representative who is currently serving or has served in that capacity within the last three (3) years.

(3) The chair may serve in addition to the six (6) members outlined in subsection (2)(b) through (g) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (1)(a) of this section.

Section 3. School Diagnostic Review. (1) Within ninety (90) days of identification as a priority school by the department, a school diagnostic review shall be scheduled to review the functioning of the school council and the specific leadership capacity of the principal.

(2) The determination of the principal and school based decision-making council's ability to lead the intervention in the school shall be based upon an assessment of whether:

(a) The principal and council demonstrate maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal and council lead and operate the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal and council establish a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal and council ensure that systems are in place for collection and use of data;

(e) The principal and council ensure that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal and council ensure that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(3) The school diagnostic review shall include:

(a) Analysis of state and local education data;

(b) Review of comprehensive school improvement plans and other planning documents;

(c) Interviews with students, parents, all school council members, school and district personnel, and community members;

(d) Direct observation;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of school council minutes and agendas;

(g) Administration of the Missing Piece of the Proficiency Puzzle, June 2007; and

(h) Other methods that may be required to obtain necessary information.

(4) Following the review, a report shall be submitted to the Commissioner of Education that specifically makes:

(a) A determination of the capacity of a principal and school council to lead an intervention option in a priority school;

(b) A recommendation by the diagnostic review team as to whether the principal has capacity to lead the school to recovery, or should be replaced; and

(c) A recommendation by the diagnostic review team as to whether the school council has capacity to lead the school to recovery or whether school council authority should be transferred.

(5) If the school council is determined to have leadership capacity, it shall retain its authority; however, if the school council is determined not to have leadership capacity, the council shall either remain as an advisory council or be replaced by the Commissioner of Education.

(6) Following the initial diagnostic review process, a review shall be repeated at least once every two (2) years or as often as the commissioner deems necessary.

(7) Pursuant to KRS 160.346(8), the authority of the school council shall be restored if the school is not classified as persistently low-achieving for two (2) consecutive years.

(8) The Commissioner of Education shall notify a school or district that it has exited priority status when the school:

(a) Meets AMO goals for three (3) consecutive years;

(b) Is no longer identified by KRS 160.346(1)(a)'s applicable percent calculation of being in the lowest five (5) percent; and

(c) Scores at or above a seventy (70) percent graduation rate for three (3) consecutive years.

Section 4. District Diagnostic Review. (1) Within ninety (90) days of identification by the department of a district containing a priority school, or of a priority district, a district diagnostic review shall be scheduled to review the functioning of the district administration and its specific leadership capacity related to each identified priority school.

(2) The determination of the district's level of functioning and ability to manage the intervention in the priority school shall be based upon an assessment of capacity in the following areas:

(a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates the school district under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(3) The district diagnostic review shall include:

(a) Analysis of state and local education data;

(b) Review of school board minutes;

(c) Review of comprehensive district improvement plans and other planning documents;

(d) Interviews with school board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Administration of the Missing Piece of the Proficiency Puzzle, June 2007; and

(h) Other methods that may be required to obtain necessary information.

(4) Following the review, a report shall be submitted to the Commissioner of Education that specifically makes a recommendation regarding the district's level of functioning and whether the district has the capability and capacity to manage the intervention in each identified school.

(5) There shall be only one (1) district diagnostic review per district, per year, regardless of the number of priority schools located in the district.

(6) A review shall be repeated every two (2) years or as often as the Commissioner of Education deems necessary.

Section 5. Notification to Schools and Districts of Diagnostic Review Determination. (1) After completion of the district diagnostic review and within the deadline set in KRS 160.346(4), the Commissioner of Education shall notify in writing the school council, principal, superintendent, and local board of education of the determination regarding:

(a) School council leadership capacity and authority to manage the intervention in a priority school;

(b) Principal leadership capacity and authority; and

(c) District leadership capacity and authority.

(2) The notification shall include a statement of the appeal process to the KBE provided in KRS 160.346(5). The Commissioner of Education shall make the final report publicly available.

Section 6. Authority to Select an Intervention Option. (1) If the final determinations in the diagnostic reviews are that:

(a) The school council has sufficient capacity to manage the intervention, and

(b) The district has the capacity to support the intervention, the school council shall, within thirty (30) days after the receipt of the final determination and pursuant to KRS 160.346, choose an intervention option and develop an action plan. The council shall present the option and plan to the local board of education, which shall give final approval and provide the necessary support and resources for the intervention effort.

(2) If the final determinations in the diagnostic reviews are that:

(a) The school council does not have sufficient capacity to manage the intervention and is recommended to become advisory, and

(b) The district has sufficient capacity to support the intervention and council authority is recommended to be transferred to the superintendent, then the superintendent shall, within forty-five (45) days after the receipt of the Commissioner of Education's notification or thirty (30) days after the action of the KBE if an appeal is filed, make a recommendation for an intervention option and submit the choice to the local board of education, which shall make the final determination on the intervention option.

(3) If the final determinations in the diagnostic reviews are that:

(a) The school council has sufficient capacity to manage the intervention, and

(b) The district does not have the capacity to support the intervention, then the school council shall, within thirty (30) days after the receipt of the Commissioner of Education's notification or thirty (30) days after the action of the KBE if an appeal is filed, choose the intervention option and submit its choice to the local board of education, which shall review the option chosen by the school council and submit the choice to the Commissioner of Education, who shall approve the choice.

(4) If the final determinations in the diagnostic reviews are that:

(a) The school council does not have sufficient capacity to manage the intervention and is recommended to become advisory, and

(b) The district lacks sufficient capacity to support the intervention and council authority is recommended to be transferred to the Commissioner of Education, then the Commissioner of Education shall, within forty-five (45) days after receipt of these determinations and in consultation with the advisory school council, superintendent, and local board of education, determine the intervention option. The identified school and local district shall implement the intervention option with support from the department.

School council has capacity to lead the intervention	District has capacity to lead the intervention	Choice of intervention option
Yes	Yes	School council chooses option and develops action plan, which is submitted to board, board approves and provides necessary support.
No	Yes	Superintendent recommends to local board, board has final approval.
Yes	No	School council chooses option, submits to board, board reviews and submits to Commissioner of Education, Commissioner of Education approves.
No	No	Commissioner of Education chooses option in consultation

		with advisory school council, superintendent, and local board. School and district implement option with department support.
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Section 7. Replacement of School Council Members by the Commissioner of Education. (1) When the Commissioner of Education is required to appoint advisory school council members to serve until the requirements of KRS 160.346(8) are met, the Commissioner of Education shall include three (3) teachers and two (2) parents from the school. These members may be appointed from a list of nominees submitted by the superintendent.

(2) The Commissioner of Education shall select candidates who are capable of providing leadership in the turnaround environment of the school and meet the requirements of KRS 160.345.

(3) The commissioner shall fill any subsequent vacancy through this procedure, until full authority is restored to the school council.

Section 8. Implementation of Intervention Options. (1) A school or district engaging in the re-staffing option shall:

(a) Replace the principal, when required by KRS 160.346(9)(b), with a certified principal who has specific training in turning around low-achieving schools and grant the new principal sufficient operational flexibility, including staffing, calendars, time, and budgeting, to fully implement a comprehensive approach to substantially improve student achievement outcomes and, if a high school, increase high school graduation rates;

(b) Replace the school council, when required by KRS 160.346(9)(b), with individuals appointed by the Commissioner of Education pursuant to Section 7 of this administrative regulation;

(c) Use competencies adopted by the local board of education to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students when screening the existing staff, rehiring no more than fifty (50) percent of those staff, and selecting new staff as required by KRS 160.346(9)(b);

(d) Implement strategies, including more flexible working conditions, that are designed to increase opportunities for career growth and are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the priority school;

(e) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement intervention strategies;

(f) Adopt a new governance structure which shall include requiring the school to provide quarterly progress reports to the local board of education and the department;

(g) Use data to identify and implement an instructional program that is research-based and aligned from one (1) grade to the next as well as aligned with the Kentucky Core Academic Standards established in 704 KAR 3:303;

(h) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(i) Establish schedules and implement strategies that provide increased learning time; and

(j) Provide appropriate social, emotional, and community-oriented services and supports for students.

(2) A school or district engaging in the external management option shall:

(a) Choose an external management organization (EMO) from a list of approved EMOs established by the KBE pursuant to Section 9 of this administrative regulation;

(b) Contract with the EMO to provide day-to-day management of the school; and

(c) Provide quarterly progress reports to the local board of

education and the department.

(3) A school or district engaging in the transformation option shall:

(a) Replace the principal, when required by KRS 160.346(9)(d), with a certified principal who has specific training in turning around low-achieving schools;

(b) Replace the school council, when required by KRS 160.346(9)(d), with individuals appointed by the Commissioner of Education pursuant to Section 7 of this administrative regulation;

(c) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

1. Take into account data on student growth as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates; and

2. Are designed and developed with teacher and principal involvement;

(d) Identify and provide additional leadership and compensation opportunities to school leaders, teachers, and other staff who have increased student achievement and high school graduation rates, if applicable, and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(e) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed in conjunction with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies which shall include:

1. Subject-specific pedagogy;

2. Instruction that reflects a deeper understanding of the community served by the school; and

3. Differentiated instruction;

(f) Implement strategies designed to increase opportunities for career growth which shall include more flexible working conditions designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(g) Use data to identify and implement an instructional program that is research-based and aligned from one (1) grade to the next as well as aligned with the Kentucky Core Academic Standards as established in 704 KAR 3:303;

(h) Promote the continuous use of student data from formative, interim, and summative assessments to inform and differentiate instruction in order to meet the academic needs of individual students;

(i) Increase learning time and create community-oriented schools that:

1. Establish schedules and implement strategies that provide increased learning time; and

2. Provide ongoing mechanisms for family and community engagement;

(j) Provide operational flexibility and sustained support that:

1. Gives the school sufficient operational flexibility, including staffing, calendar, time, and budgeting to fully implement a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

2. Ensures that the school participates in ongoing, intensive technical assistance and related support from the local district and the state; and

(k) Provide quarterly progress reports to the local board of education and the department.

(4) A school or district engaging in the school closure option shall develop a plan for the closure of the school. The plan shall include:

(a) A process for the transfer of students to higher performing schools in the district;

(b) A determination by the local board of education regarding staff assignments and the use of the existing facility and other assets;

(c) A method for monitoring the progress of students in their new school environment; and

(d) A quarterly progress report to the local board of education

and the department.

Section 9. Establishment of Approved External Management Organizations. (1) The list of approved external management organizations (EMOs) shall be created by the Commissioner of Education following the application process established in subsection (2) of this section.

(2) The Commissioner of Education shall issue a request for information to solicit EMO applicants who shall detail the scope of the services they are able to provide to a priority school. The request for information shall require the following information regarding the EMO applicant's qualifications:

(a) The ability of the EMO to staff the school, during the period of the EMO contract, with dynamic leadership with experience in turning around low-achieving schools;

(b) The ability of the EMO to conduct a needs assessment in the school and develop a plan of action based on the needs assessment;

(c) The ability of the EMO to deliver a comprehensive list of services designed to turn around the school;

(d) The ability of the EMO to screen staff and make decisions on staff assignments;

(e) The familiarity of the EMO with Kentucky education statutes and administrative regulations;

(f) The experience of the EMO in turning around low-achieving schools;

(g) References from other low-achieving schools or school districts supporting the EMO's ability to turn around low-achieving schools;

(h) Evidence provided by the EMO that its provision of services includes instructional leadership, professional learning support for teachers and other staff, and services to families and community stakeholders;

(i) Evidence of the EMO's financial stability, any pending or threatened litigation, and liability insurance coverage; and

(j) Other information required pursuant to KRS Chapter 45A.

(3) The Commissioner of Education shall review all responses and determine which applicants meet the criteria in subsection (2) of this section. The qualifying applicants shall be submitted to the KBE for approval. The list of approved EMOs shall be made public upon approval by the KBE.

Section 10. Incorporation by Reference. (1) "The Missing Piece of the Proficiency Puzzle, June 2007", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Next Generation Schools and Districts, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D., Commissioner of Education

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 29, 2014 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2014. Send

written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: In order to obtain approval of Kentucky's Elementary and Secondary Education Act (ESEA) Flexibility Waiver, which allows flexibility from specific requirements of Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. sec. 6301, et seq., the United States Department of Education requires the agency to identify the state's lowest-achieving schools (referenced in KRS 160.346 as "persistently low-achieving schools") as "priority schools", and for those priority schools to follow the requirements of 20 U.S.C. 6301, Section 1003 (g) regarding school intervention options. KRS 160.346 requires the agency to promulgate administrative regulations to establish the process for implementing school interventions and alternate management options for the schools, districts and state for "persistently low-achieving schools" (now identified as "priority schools"). This administrative regulation establishes those process and procedures. It combines relevant elements of 703 KAR 5:120 and 703 KAR 5:180, which applied to persistently low-achieving schools, and applies them to priority schools. Those two administrative regulations are being repealed. This administrative regulation will only apply to a limited number of schools and districts as follows: 1) newly identified schools replacing current priority schools that have exited that status, 2) to any schools where the agency determines an additional diagnostic review is necessary, and 3) for priority districts that will be identified using 2014-2015 data.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and procedures for school intervention and management options for priority schools and districts required by Kentucky's ESEA Flexibility Waiver and KRS 160.346.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.346 requires the agency to promulgate administrative regulations to establish the process and procedures for implementing the intervention options available to local boards of education and the agency. This administrative regulation provides the process and procedures for priority schools and districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a specific process and procedures for implementing the intervention options of KRS 160.346 that are available to priority schools and districts, local boards of education, and the agency.

(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: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will only apply to a limited number of schools and districts as follows: 1) newly identified priority schools that replace one of the identified priority schools when they have exited that status, 2) any priority schools where the agency determines an additional diagnostic review is necessary, and 3) priority districts that will be identified using 2014-15 data. It will also impact the school councils of

priority schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The priority schools, their councils and their districts will be provided with sufficient detail to perform their responsibilities as required by KRS 160.346. Agency staff must perform diagnostic reviews to determine the capacity of councils, principals and districts and make recommendations to the Commissioner of Education.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The agency must notify the local district upon receipt of diagnostic review committee recommendations as to school and district leadership capacity. Agency staff and contracted individuals will be responsible for completion of the diagnostic reviews described in the administrative regulation.

(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 schools and districts impacted by this process. The administrative regulation results in costs to the agency to conduct the diagnostic review process, which costs are paid for through Commonwealth School Improvement Funds. The cost is estimated at between \$12,000 and \$18,000 per diagnostic review depending on the student population of the school.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified priority schools will have an improved chance of turning around their struggling school by qualifying to apply for additional resources to assist in the school improvement efforts as they are available. The agency will have better ability to conduct diagnostic reviews and make recommendations to the school districts regarding the best strategies for improving these schools.

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

(a) Initially: The administrative regulation results in costs to the agency to conduct the diagnostic review process and to provide support to the schools. The diagnostic review is paid through the Commonwealth School Improvement Funds. The cost is estimated at between \$12,000 and \$18,000 per diagnostic review depending on the student population of the school. An intervention team of Education Recovery staff assigned to provide year-round, on-site support to the school (if funds are available) would cost approximately \$450,000. The funds for these teams currently are provided through Commonwealth School Improvement Funds or federal funds as available.

(b) On a continuing basis: The administrative regulation results in costs to the agency to conduct the diagnostic review process and to provide support to the schools. The diagnostic review is paid through the Commonwealth School Improvement Funds. The cost is estimated at between \$12,000 and \$18,000 per audit depending on the student population of the school. Approximately 14 reviews are expected per year. The intervention team of Education Recovery staff (if funds are available) would cost approximately \$450,000. The funds for intervention teams currently are provided through Commonwealth School Improvement Funds or federal funds as available.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Commonwealth School Improvement Funds and federal funds as available.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing priority schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029 (7); KRS 156.070 (5); KRS 158.6453 (3); KRS 158.6455; KRS 160.346; 20 U.S.C. 6301, Section 1003 (a); Kentucky's Elementary and Secondary Education Act (ESEA) Flexibility Waiver.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are currently forty-one (41) priority schools, which is the number required to be identified under the ESEA waiver. When a school meets the requirements for moving from the priority schools list, another will be identified. Initial identification will be the cost of the diagnostic review and intervention staff (as funds are available). The diagnostic review cost will be between \$12,000 and \$15,000 depending on the student population. An intervention team of Education Recovery staff assigned to provide year-round, on-site support to the school (if funds are available) would cost approximately \$450,000. The funds for these teams currently are provided through Commonwealth School Improvement Funds or federal funds as available.

(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, however this administrative regulation enables some districts to be eligible for federal funding as it is available.

(c) How much will it cost to administer this program for the first year? The cost will depend on how many currently identified priority schools exit the process, and how many are eligible for or determined by the agency to need a follow-up diagnostic review. At this point, approximately three schools have exited the process, but since schools must fail to meet annual measurable objective (AMO) goals for three years to be identified, the first replacement schools will not be identified until the 2014-15 data release. The cost will be between \$12,000 and \$18,000 per diagnostic review depending on the student population of the school. Approximately fourteen (14) reviews are expected per year.

(d) How much will it cost to administer this program for subsequent years? The cost will depend on how many currently identified priority schools exit the process, and how many are eligible for or determined by the agency to need a follow-up diagnostic review. At this point, approximately three schools have exited the process, but since schools must fail to meet annual measurable objective (AMO) goals for three years to be identified, the first replacement schools will not be identified until the 2014-15 data release. The cost will be between \$12,000 and \$18,000 per audit depending on the student population of the school. Approximately fourteen (14) reviews are expected per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(New Administrative Regulation)**

750 KAR 1:030. Emergency and Targeted Investment Fund.

RELATES TO: KRS 157.618

STATUTORY AUTHORITY: KRS 157.617, 157.618, 157.622

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the commission to promulgate an administrative regulation governing allocations of state funds to eligible school districts. Pursuant to KRS 157.618(5), this administrative regulation establishes the application procedure the SFCC will utilize in determining eligibility for funding from the emergency and targeted investment fund due to an unforeseen emergency or the expectation that the facility will be rendered structurally uninhabitable.

Section 1. Definitions. (1) "Applicant" means any local public school district that has submitted an application to the authority for an offer of assistance from the emergency and targeted investment fund and meets the definition of a "common school" under KRS 158.030.

(2) "Application" means the information submitted by an applicant to obtain an offer of assistance, including the need for a specific project and financial information necessary to determine eligibility for assistance from the emergency and targeted investment fund.

(3) "Available local revenues" means:

(a) The sum of the school building fund account balance;

(b) The bonding potential of the capital outlay and building funds;

(c) The capital outlay fund account balance; and

(d) Any unexpended funds in accounts for projects that have been completed at the time an application to receive an offer of assistance from the emergency and targeted investment fund is submitted.

(4) "Commission" means the School Facilities Construction Commission.

(5) "Core academic facility" means a public elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school. "Core academic facility" shall not include district-operated schools that are exclusively:

(a) Vocational-technical, special education, or preschool programs;

(b) Instructional programs operated in institutions or schools outside of the district; or

(c) Alternative schools designed to provide services to at-risk populations with unique needs.

(6) "District facility plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by administrative regulations of the Kentucky Board of Education.

(7) "Offer of assistance" means a financial commitment from the commission to pay all or a portion of the debt service on bonds issued by or on behalf of the applicant or a direct loan or grant made to the applicant from the emergency and targeted investment fund.

Section 2. Eligible Applicants. (1) A local public school district may submit a cover letter and the information requested in Section 3(2) of this administrative regulation for an offer of assistance from the emergency and targeted investment fund if any of the district's core academic facilities fall within KRS 157.618(3).

(2) Local public school districts that submit an application under KRS 157.618(3)(c) or (d) shall have levied a ten (10) cent equivalent tax for the purposes of funding major construction and renovation projects and the project shall be identified as a priority one (1) or priority two (2) in the district facility plan.

Section 3. Submission Requirements. (1) The commission may accept applications for offers of assistance from the emergency and targeted investment fund from local public school districts throughout the commission's fiscal year.

(2) Applications for offers of assistance from the fund shall include:

(a) Information about the school facility to which the offer of assistance would be applied and an explanation of any events that contributed to the facility's physical condition;

(b) Certification from local officials, engineers, or the commissioner of education that the facility meets the criteria in KRS 157.618(3);

(c) A proposed timeline for bidding and awarding contracts; planning and design; construction; and equipping the facility;

(d) A copy of a motion or resolution from the local board of education approving the request for an offer of assistance from the fund;

(e) An estimate from a financial advisor hired by the applicant of the amount of funding necessary to bring the facility to the Kentucky Department of Education's current standards; and

(f) Certification from the applicant that the project will adhere to the Kentucky Department of Education's best practice guidelines.

(3) Offers of assistance shall be limited to the lesser of:

(a) The difference between the total cost of the project and the applicant's available local revenues; or

(b) A dollar-amount limit determined by the commission at the commission's first regular meeting held after the beginning of the commission's fiscal year that shall be applied to all projects during that fiscal year.

(4) All information submitted as application for offers of assistance from the fund shall be submitted to the School Facilities Construction Commission at 229 West Main Street, Suite 102, Frankfort, Kentucky 40601. The supporting documentation shall be accompanied with a letter from the district's superintendent to the commission requesting assistance and summarizing the district's facility needs.

Section 4. Project Execution. (1) Applicants that receive offers of assistance from the emergency and targeted investment fund shall follow the process as established in 750 KAR 1:010, Sections 6, 7, 8, and 10, concerning allowable expenditure of funds, bond issuance procedures, and refinancing savings. Notwithstanding 750 KAR 1:010, Section 7(2), funds available for a project shall be expended for the project that is identified in the application and any balance of funds remaining after completion of the project shall be applied toward the associated bonds. If the commission's offer of assistance takes the form of a cash grant or loan, any unexpended funds shall be returned to the emergency and targeted investment fund.

(2) Applicants may utilize alternative bond structures if the structure is approved by the executive director of the School Facilities Construction Commission.

(3) If a school district receives an offer of assistance from the emergency and targeted investment fund and subsequently, as a result of litigation or insurance, receives funds for the original facility, the district shall reimburse the emergency and targeted investment fund pursuant to KRS 157.618(4).

KRISTI CULPEPPER, Executive Director

APPROVED BY AGENCY: August 15, 2014

FILED WITH LRC: August 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 from 1:00 p.m. to 3:00 p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 through September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Kristi Culpepper, Executive Director, School Facilities Construction Commission, 229 West Main, Suite 102, Frankfort, Kentucky 40601, phone (502) 564-5582, fax (888) 979-6152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kristi Culpepper

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the application process for receiving an offer of assistance from the emergency and targeted investment fund. The administrative regulation also references the Commission's other administrative regulations involving eligible uses of funds, bond issuance procedures, and refinancing.

(b) The necessity of this administrative regulation: KRS 157.618(5) requires the School Facilities Construction Commission to promulgate regulations for the emergency and targeted investment fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 157.617(1) and 157.622(4) empower the School Facilities Construction Commission to promulgate administrative regulations governing the operation of its programs. KRS 157.618(5) specifically directs the commission to promulgate regulations establishing the process to apply for and receive funds from the emergency and targeted investment fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the application process for receiving an offer of assistance from the emergency and targeted investment fund. The administrative regulation also references the Commission's other administrative regulations involving eligible uses of funds, bond issuance procedures, and refinancing.

(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: Local public school districts with facilities that have been impacted by a catastrophic event or that is otherwise expected to be rendered structurally uninhabitable.

(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 regulation outlines an application process and process for issuing bonds to fund a project, if applicable. These activities involve professional fees that may or may not be reimbursed through a bond issue.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will depend on the nature of the project and how financing is arranged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Damaged or hazardous school facilities will be replaced.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

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

implementation and enforcement of this administrative regulation: These activities will be incorporated into the commission's existing operating budget.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not applied in this regulation because all school districts will be treated similarly under the proposed regulation and application process. Pursuant to KRS 157.611, the School Facilities Construction Commission must distribute facilities funding to school districts in an equitable manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.617(1); 157.622(4); KRS 157.618(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. Would only impact school districts that are applying for funding, not school districts broadly.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

804 KAR 10:030. Local government regulatory license fees.

RELATES TO: KRS 243.075

STATUTORY AUTHORITY: KRS 243.075(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.075(5)(a) states that an administrative regulation shall be promulgated to establish a process by which a city of the third or fourth class, or a county that contains a city of the third or fourth class, in the first year following the discontinuance of prohibition, may estimate any additional policing, regulatory, or administrative expenses incurred by that city or county that are directly and solely related to the sale of alcoholic beverages. This administrative regulation establishes what specific costs and expenses may be subject to reimbursement, and a form is incorporated by reference to calculate and document the expense.

Section 1. Definition. "Qualified city or county" means: (1)

Before January 1, 2015, a city of the third or fourth class, or a county containing a city of the third or fourth class; or

(2) Beginning January 1, 2015, a city with a population between 3,000 and 19,999 people, a county containing a city with a population between 3,000 and 19,999 people, or a city or county that had been previously permitted to issue regulatory license fees under subsection (1) of this section.

Section 2. A qualified city or county may assess a regulatory license fee only on the gross receipts of the sale of alcoholic beverages by a retail licensee with a licensed premises located within the jurisdiction of the qualified city or county.

Section 3. Allowable costs and expenses. The costs and expenses that may be subject to reimbursement through a regulatory license fee shall directly and solely relate to the discontinuance of prohibition in the qualified city or county, including reasonable costs and expenses of:

(1) Employment, salary, and benefits of the city or county alcoholic beverage control administrator and staff who administer alcoholic beverage control laws;

(2) Office supplies and equipment for the city or county to administer an alcoholic beverage control office;

(3) Office space for an alcoholic beverage control administrator and staff;

(4) Travel costs and expenses for the city or county alcoholic beverage control administrator and staff;

(5) Additional policing expenses directly related to the discontinuance of prohibition; and

(6) Miscellaneous costs and expenses solely and directly related to the discontinuance of prohibition, if the following information is included on the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition:

(a) A description of the expenditure;

(b) A detailed explanation of the necessity of the expenditure as it related to the discontinuance of prohibition; and

(c) The cost of the expenditure.

Section 4. To the extent that a qualified city or county incurs the costs or expenses identified in Section 3 of this administrative regulation, a qualified city or county may seek reimbursement only for that portion of the costs and expenses that arise directly and solely because of the discontinuance of prohibition.

Section 5. A qualified city or county shall use the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition to estimate permissible expenses and to establish the fee.

Section 6. The Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition used by a qualified city or county to determine permissible regulatory fees shall be retained pursuant to 725 KAR 1:061.

Section 7. Incorporation by Reference. (1) "Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition", August 2014, is incorporated by reference:

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

FREDERICK A. HIGDON, Chairman

LARRY BOND, Acting Secretary

APPROVED BY AGENCY: August 8, 2014

FILED WITH LRC: August 14, 2014 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 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 September 19,

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 through September 30, 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 creates a mechanism for qualified cities and counties that vote to go wet to establish regulatory licensing fees for the first year after their wet/dry vote.

(b) The necessity of this administrative regulation: KRS 243.075 states that the Department of Alcoholic Beverage Control shall promulgate an administrative regulation to establish how qualified cities and counties estimate regulatory licensing fees for the first year after their wet/dry vote.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation:

(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: All businesses with a physical premise within the jurisdictional boundaries of a qualified city or county that votes to go wet will be affected by this administrative regulation. Cities of the third or fourth class, or counties containing a city of the third or fourth class will be affected by this administrative 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:

(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: Qualified cities or counties will be required to completed the incorporated material in order to establish their regulatory licensing fees for the first year after voting to go wet. They will also be required to retain the completed material for auditing purposes.

(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): There are no additional benefits from this administrative regulation.

(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: Local government funds will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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. All qualified city or county governments who vote to go wet after July 15, 2014 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 243.075 requires the Department of Alcoholic Beverage Control to promulgate 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). This regulation will have no impact on the expenditures and revenue of the local governments.

(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.

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

RELATES TO: KRS 198B.706

STATUTORY AUTHORITY: KRS 198B.706

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish

requirements for continuing education. This administrative regulation establishes the definitions for 815 KAR Chapter 6.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Home Inspectors.

(2) "Board" is defined by KRS 198B.700(2).

(3) "Complaint" means a written allegation of misconduct by a home inspector, or other allegation of a violation of KRS Chapter 198B, the requirements established in 815 KAR Chapter 6, or another state or federal statute or regulation applicable to home inspectors.

(4) "Complaint screening committee" means the committee appointed pursuant to 815 KAR 6:060, Section 1.

(5) "Continuing education hour" means fifty (50) clock minutes of instruction, exclusive of any breaks, recesses, testing, or other time not spent in instruction.

(6) "Licensee" is defined by KRS 198B.700(7).

(7) "Prelicensing course provider" means the person or legal entity approved by the board to conduct prelicensing courses in home inspection.

(8) "Probationee" means a licensee, prelicensing course provider, or continuing education provider placed on probation by the board.

(9) "Provider" means the person or legal entity approved by the board to provide continuing education in home inspections.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2014, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leewood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 defines the terms used in 815 KAR Chapter 6.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide definitions for terms used throughout 815 KAR Chapter 6.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate administrative regulations per KRS 198B.706.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the terms of art used and relied upon by the Kentucky Board of Home Inspectors.

(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: N/A.

(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 the administrative regulation or amendment: N/A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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: Costs to implement this administrative regulation will be minimal, mainly consisting of the cost to make copies of the revised application form.

(b) On a continuing basis: No additional costs are anticipated.

(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 licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. N/A.

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Home Inspectors
(New Administrative Regulation)**

815 KAR 6:080. Continuing Education Provider.

RELATES TO: KRS 198B.712, 198B.722, 198B.724
STATUTORY AUTHORITY: KRS 198B.706, 198B.712(2)(c), 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for continuing education. KRS 198B.724 requires the board to establish continuing education requirements. This administrative regulation establishes the procedures for being approved as a continuing education provider.

Section 1. Preapproval of Continuing Education Hours. (1) Any entity seeking to obtain approval of a continuing education course prior to its offering shall submit a request for approval to the board at least thirty (30) days prior to the next regularly scheduled board meeting and provide the following:

- (a) A completed Application for Approval of Continuing Education Course, Form KBHI 4;
- (b) A published course description;
- (c) A copy of the course agenda indicating hours of education and breaks;
- (d) Number of continuing education hours requested;
- (e) Name and address of competent instructors, as documented by academic training, professional licensure or certification, or professionally recognized experience;
- (f) Official certificate of completion; and
- (g) A \$500 fee, which shall be a two (2) year course approval fee.

(2) The board may approve continuing education courses that appropriately relate to the technical skills required of licensees and contain sufficient educational content to improve the quality of licensee performance.

(3) If a course is approved, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, in all other course materials used in connection with the course, and in all written advertising materials used in connection with the course.

(4) The board may approve a course for hours different than the provider's request.

Section 2. Duration of Approval. (1) Continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and the board has not imposed discipline upon the provider or its instructors.

(2) Substantial changes made in any course shall require a new approval of that course. A provider shall apply for course approval forty-five (45) days prior to the date of expiration of the original course approval.

Section 3. Denial of Application. A course which has been denied may be resubmitted to the board after adopting the suggested modifications provided by the board.

Section 4. Subsequent Approval of Continuing Education Course. A licensee may request approval for continuing education activities not approved by the board as set forth in Section 1 of this administrative regulation. The licensee shall submit documentation of attendance and participation in the form of official documents, including transcripts, certificates, affidavits signed by instructors, and receipts for fees paid to the provider, for the board to review.

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

- (a) "Continuing Education – Provider Application", Form KBHI 4, 7/2014; and
- (b) "Continuing Education – Course Application", Form KBHI 5,

7/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 creates a regulation specific to continuing education providers only. It was dissected from 815 KAR 6:040, which also addresses pre-licensure providers. The regulation establishes the procedures the board will follow to approve continuing education courses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public and potential continuing education providers of the process to obtain approval of continuing education courses, which licensees are required to obtain annually.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the application process for approval of a continuing education course.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the information that must be submitted to the board for approval of a continuing education course and sets deadlines for submission that coordinate with monthly board meetings.

(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: Currently there are approximately 360 home inspectors, four (4) home inspector associations and five (5) private home inspection continuing education providers in the Commonwealth.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Providers will have to submit applications earlier for pre-approval and the associations listed in the regulation will no longer need approval from the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A continuing education provider shall pay a \$500 fee for a two (2)-year course approval fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees are assured continuing education courses received from the listed associations will be accepted by the board. Also, licensees will have the opportunity to receive post-approval for continuing education courses they have already attended.

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

(a) Initially: The cost to implement this regulation is minimal and consists of the cost of making copies of the application.

(b) On a continuing basis: Minimal.

(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 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: The prior version of the regulation established a fee for course approvals to be twenty-five (25) dollars per class, per date offered, not to exceed \$250 in course approval fees in any one (1) year. The amended regulation requires a single fee of \$500 for a two (2)-year approval of a continuing education provider. There is not a separate fee per class or per date.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The prior version of the regulation established a fee for course approvals to be twenty-five (25) dollars per class, per date offered, not to exceed \$250 in course approval fees in any one (1) year. The amended regulation requires a single fee of \$500 for a two (2)-year approval of a continuing education provider. There is not a separate fee per class or per date. Any increase or decrease in the fees paid by a continuing education provider should be minimal as it tended to be the common practice of continuing education providers to pay \$250 annually for approval of continuing education courses.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors and the Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 198B.724

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. Expenditures will not be effected by the 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? Based on the board's 2013-2014 financial statement \$4,800 was received in continuing education applications.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a) above

(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? See 3(c) above.

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

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:090. Procedures for complaints and administrative hearings.

RELATES TO: KRS 198B.706(3), (4), 198B.712, 198B.722, 198B.728, 198B.730

STATUTORY AUTHORITY: KRS 198B.706(1), (3), (15)

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(4) requires the board to investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738, and, if appropriate, take action in accordance with KRS 198B.728 and 198B.730. KRS 198B.730(1) requires the board to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B. KRS 411.272(2) provides that KRS 411.270 to 411.282 prevail over any conflicting law otherwise applicable to any action, claim, or cause of action against a home inspector, with specified exceptions. KRS 198B.728 provides that the board shall take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738. KRS 198B.706(1) requires the board to find the requirements for and prescribe the form of documents that are required by KRS 198B.700 to 198B.738. KRS 198B.706(15) requires the board to promulgate administrative regulations to carry out the requirements of KRS 198B.700 to 198B.738. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer.

Section 1. Complaint Screening Committee. (1) The committee shall consist of three (3) board members, appointed by the chair of the board to:

- (a) Review complaints and investigative reports;
- (b) Participate in informal proceedings to resolve formal complaints; and
- (c) Make recommendations for disposition of complaints to the full board.

(2) The committee may be assisted by the board staff and counsel to the board.

Section 2. Complaint Process and Disciplinary Action Against a Licensee. (1) The board may investigate complaints related to violations of this administrative regulation and may impose the following penalties:

- (a) Deny issuance of a license;
- (b) Refuse to renew a license;
- (c) Refuse to reinstate a license;
- (d) Probation of a license;
- (e) Suspension of a license;
- (f) Revocation of a license; or
- (g) Issuance of a public or private written reprimand.

(2) A complaint may be initiated by the board, an individual, an

entity, or any governmental agency. It shall be completed on a Complaint Form, KBHI-COMP 1, and shall:

- (a) State the basis of the complaint fully and concisely, including the name of the person who the complaint is against;
- (b) Include any documentation in support of the complaint; and
- (c) If the complaint is initiated by the public, be notarized by a notary public.

(3) A copy of the initiating complaint shall be mailed to the licensee to his or her last known address on file with the board. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days of the date on which the initiating complaint was mailed. The written response shall:

- (a) Identify the respondent;
- (b) State his or her response to the complaint;
- (c) Include any documentation in dispute of the complaint;
- (d) If applicable, state whether he or she proposes to inspect the residence that is the subject of the claim and to complete the inspection within twenty-one (21) days of the date on which the initiating complaint was mailed. Any proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim; offer to compromise and settle the claim by monetary payment without inspection; or state that the home inspector disputes the claim; and
- (e) Be notarized by a notary public.

(4) Once the written response is received, the complaint review committee shall review the case. The committee shall report its findings and recommendations to the board. The board shall:

- (a) Dismiss the complaint and notify the person making the complaint and the licensee that no further action shall be taken at the present time;
- (b) Find an investigation is warranted; or
- (c) Find a violation of a provision of KRS 198B.700 to 198B.738 or the administrative regulations promulgated under KRS 198B.700 to 198B.738 and issue notice of disciplinary action to the licensee.

(5)(a) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(b) Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Based on consideration of the complaint and the investigative report, if any, the board shall find if there has been a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.

(d) If the investigator is a member of the board, he or she shall not vote.

(e) If it is found that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of the statutes or administrative regulations, the board shall notify the person making the complaint and the licensee that no further action shall be taken at the present time.

(6) If it is found that there is a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall issue written notice of disciplinary action sent to the licensee's address on file with the board and inform the licensee:

- (a) Of the specific reason for the board's action, including:
 - 1. The statutory or regulatory violation; and
 - 2. The factual basis on which the disciplinary action is based;
- (b) Of the penalty imposed; and
- (c) That the licensee may appeal the penalty to the board within twenty (20) calendar days of the date of the board's notice.

(7) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(8) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.

(9) A complaint initiated by the public shall be filed within one (1) year of the date the complainant knew or should have known of

a violation of a provision of KRS 198B.700 to 198B.738 or a provision of 815 KAR Chapter 6 by the licensee.

Section 3. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during the complaint process described in Section 2 of this administrative regulation, enter into informal proceedings with the licensee who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

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

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

Section 4. Disciplinary Action Against A Prelicensing Provider.

(1) The board may deny, suspend, probate, or revoke the registration of any prelicensing course provider for any of the following acts or omissions:

- (a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;
- (b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;
- (c) Failing to timely notify the board of a change in the information required for registration of the provider;
- (d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;
- (e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;
- (f) Failing to adequately train the staff responsible for taking attendance at any approved course;
- (g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;
- (h) Advertising that a provider has been approved by the board prior to the date the approval is granted;
- (i) Failing to include provider and course numbers in advertisements;
- (j) Failing to maintain a record of instructors;
- (k) Failing to resolve attendance reporting problems; or
- (l) Failing to comply with any other duty imposed on providers in this administrative regulation.

(2) The board shall issue written notice of disciplinary action sent to the prelicensing course provider's address on file with the board and inform the provider:

- (a) Of the specific reason for the board's action, including:
 - 1. The statutory or regulatory violation; and
 - 2. The factual basis on which the disciplinary action is based;
- (b) Of the disciplinary action being taken by the board; and
- (c) That the provider may appeal the disciplinary action to the board within ten (10) calendar days of the date of the board's notice.

(3) A written request for an administrative hearing shall be postmarked to the board within ten (10) calendar days of the date of the board's notice.

(4) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.

(5) A provider whose registration has been revoked shall not reapply for registration for two (2) years from the date of revocation.

Section 5. Disciplinary Matters Against Pre-Licensing Course or Continuing Educational Providers. (1) The board may deny, suspend, probate, or revoke the approval of any pre-licensing course or continuing education provider for any of the following acts or omissions:

- (a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;
- (b) Failing to provide complete and accurate information in the initial registration or in any notification of change in information;
- (c) Failing to timely notify the board of a change in the information required for registration of the provider;

(d) Falsifying of any records regarding the courses conducted by the provider or the persons who attended the courses offered;

(e) Failing to maintain any required records regarding course offerings conducted by the provider or the persons who attended the course;

(f) Failing to adequately train the staff responsible for taking attendance at any approved course;

(g) Failing to provide the board with copies of any document or other information required to be maintained by the provider pursuant to this administrative regulation;

(h) Advertising that a provider has been approved by the board prior to the date the approval is granted;

(i) Failing to include provider and course numbers in advertisements;

(j) Failing to maintain a record of instructors;

(k) Failing to resolve attendance reporting problems; or

(l) Failing to comply with any other duty imposed on providers in this administrative regulation.

(2) The board shall issue written notice of disciplinary action sent to the prelicensing course provider's address on file with the board and inform the provider:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

(b) Of the disciplinary action being taken by the board; and

(c) That the provider may appeal the disciplinary action to the board within ten (10) calendar days of the date of the board's notice.

(3) A written request for an administrative hearing shall be postmarked to the board within ten (10) calendar days of the date of the board's notice. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(4) If the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal.

Section 6. Right of Appeal from a Denial of or Refusal to Renew or Reinstate a License. (1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

Section 7. Revocation of Probation. (1) If the board moves to revoke probation, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated; and

(c) That the probationee may appeal the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on

each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of revocation shall be effective upon the expiration of the time for the certificate holder to request an appeal.

Section 8. Any request for an administrative hearing shall be sent to the Board of Home Inspectors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 9. Each appeal shall be governed in accordance with KRS Chapter 13B.

Section 10. Each appeal shall be limited to the specific issues in dispute identified in the request for an administrative hearing.

Section 11. Incorporation by Reference. (1) "Complaint Form", Form KBHI 7, 7/2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Home Inspectors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, Monday through Friday, 8:30 a.m. to 5 p.m.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2014, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 procedural guidelines for board hearings and the processing of complaints against licensees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to allow for disciplinary action to be taken against a licensee and ensure that licensees are placed on notice as to the proper guidelines and process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706 gives the board authority to regulate the practice of home inspections and enforce the administrative regulations of the board. It also gives the board the authority to cause the prosecution of persons violating the administrative regulations.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which disciplinary action is taken against a licensee.

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

(a) How the amendment will change the existing administrative

regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts any of the Currently there are approximately 360 home inspectors, six (6) continuing education providers, and six (6) pre-licensing course providers who may have disciplinary action taken against them.

(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 regulation will require the impacted parties to request an administrative appeal and provide the basis for dispute of the action taken by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be reduced legal costs for cases where an administrative appeal is not sought.

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

(a) Initially: This regulation is merely a recodification of the procedures previously employed by the board for disciplinary actions. No new cost will be associated with the promulgation of this regulation.

(b) On a continuing basis: See above.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded strictly from fees paid by applicants and licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire boards, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors and Office of Occupations and Professions, which provides administrative services to the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a), KRS 198B.706(4), KRS 198B.706(8), KRS 198B.706(12), KRS 198B.728, and KRS 198B.730.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire boards, or school districts) for the first year? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire boards, or school districts) for subsequent years? This regulation will generate approximately \$500 in revenue, which is a decrease from the current amount.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:100. Compensation.

RELATES TO: KRS 198B.704(17)

STATUTORY AUTHORITY: KRS 198B.704(17), 198B.706(15)

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738. KRS 198B.704(17) authorizes each member of the board to receive a minimum salary of thirty-five (35) dollars per diem and reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101. This administrative regulation establishes the compensation for board members.

Section 1. (1) Each member of the board shall receive compensation of \$100 per diem for each day actually spent in the discharge of official duties.

(2) The reimbursement to board members for actual and necessary expenses shall be in accordance with state law and the standards applicable to state employees pursuant to KRS 44.060, KRS 45.101, and 200 KAR 2:006.

MITCH BUCHANAN, Board Chair

APPROVED BY AGENCY: August 12, 2014

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 227, fax (502) 696-4961.

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 compensation for the board members for each day of actual board services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the compensation for the board members for each day of actual service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 198B.704(17) and KRS 198B.706(15) by establishing the compensation for the board members within the parameters set out in statute.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation informs the public how much compensation a board member receives for board service.

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

(a) How the amendment will change the existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are nine (9) members of 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: The board members will be required to perform service for the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Board members and the public will be informed how much compensation a board member receives for board service.

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

(a) Initially: Historically, the board has met an average of twelve (12) times per year. The cost per meeting for fiscal year 2013-2014 was approximately \$1,200 per meeting, or \$14,400 per year.

(b) On a continuing basis: See above.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded strictly from fees paid by applicants and licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 198B.704(17) and KRS 198B.706(15).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Approximately \$21,420.00.

(d) How much will it cost to administer this program for subsequent years? Approximately \$21,420.00.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(New Administrative Regulation)

907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health service organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in the recipient's treatment plan; and

(b) Provided in accordance with the recipient's treatment plan.

Section 2. Provider Participation. (1) To be eligible to provide

services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be licensed as a behavioral health services organization in accordance with 902 KAR 20:430; and

(d) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Demonstrated experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the corresponding following requirements:

(a) A screening, crisis intervention, or intensive outpatient program services provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological associate working under the supervision of a licensed psychologist; or

3. A licensed psychological practitioner;

(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst; or

11. A peer support specialist working under the supervision of an approved behavioral health services provider;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health service provider;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a:

a. Licensed assistant behavior analyst; or

b. Certified alcohol and drug counselor;

(h) Service planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse;

10. A licensed behavior analyst; or

11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;

7. A physician;

8. A psychiatrist;

9. An advanced practice registered nurse; or

10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(j) Assertive community treatment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed clinical social worker;

4. A licensed professional clinical counselor;

5. A licensed professional art therapist;

6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except for a:

 - a. Licensed assistant behavior analyst; or
 - b. Certified alcohol and drug counselor;

11. A peer support specialist working under the supervision of an approved behavioral health service provider; or
12. A community support associate;
- (k) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst;
 11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or
 12. A community support associate; or
- (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for a:
 - a. Licensed assistant behavior analyst; or
 - b. Certified alcohol and drug counselor; or 11. A peer support specialist working under the supervision of an approved behavioral health services provider.
- (3)(a) A screening shall:
 1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
 2. Not establish the presence or specific type of disorder; and
 3. Establish the need for an in-depth assessment.
- (b) An assessment shall:
 1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual 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 individual to develop a treatment and service plan; and
 4. Not include psychological or psychiatric evaluations or assessments.
- (c) Psychological testing shall include:
 1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 2. Interpretation and a written report of testing results.
- (d) Crisis intervention:
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 - a. The recipient; or
 - b. Another individual;
 2. Shall consist of clinical intervention and support services

- necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
3. Shall be provided:
 - a. On-site at the behavioral health services organization's office;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient;
 4. Shall be followed by a referral to non-crisis services if applicable; and
 5. 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 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 behavioral health services including treatment and supports to:
 - (i) Reduce symptoms or harm; or
 - (ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care.
 - (f) 1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:
 - a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and
 - b. A high risk of out-of-home placement due to a behavioral health issue.
 2. Day treatment shall:
 - a. Consist of an organized, behavioral health program of treatment and rehabilitative services for an individual with a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
 - b. Include:
 - (i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - (ii) Behavior management and social skills training;
 - (iii) Independent living skills that correlate to the age and development stage of the recipient; or
 - (iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
 - c. Be provided:
 - (i) 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);
 - (ii) On school days and during scheduled school breaks;
 - (iii) In coordination with the recipient's individualized educational plan if the recipient has an individualized educational plan;
 - (iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and
 - (v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.
 3. To provide day treatment services, a behavioral health services organization shall have:
 - a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and
 - b. Knowledge of substance use disorders.
 4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.
 - (g) 1. Peer support services shall:
 - a. Be social and emotional support that is provided by an

individual who is experiencing a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

- b. Be an evidence-based practice;
- c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;
- d. Be provided by a self-identified consumer, parent, or family member;

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health services provider to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication prescribing and

monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's treatment plan;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan;

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of a mental health disability;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. 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)1. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;

b. Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;

c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;

e. Be provided under the medical direction of a physician;

f. Provide continuous nursing services;

g. Be based on individual need and may include:

(i) A screening;

(ii) An assessment;

(iii) Service planning;

(iv) Individual outpatient therapy;

(v) Group outpatient therapy;

(vi) Family outpatient therapy; or

(vii) Peer support; and

h. Be provided in accordance with 908 KAR 1:370.

2. The physical structure in which residential services for substance use disorders is provided shall:

a. Have more than eight (8) but less than seventeen (17) beds; and

b. Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

3. A short-term length-of-stay for residential services for substance use disorders:

a. Shall be less than thirty (30) days in duration;

b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:

(i) Stabilize a recipient's substance use disorder; and

(ii) Help the recipient develop and apply recovery skills; and

c. May include the services listed in subparagraph 1.g. of this paragraph.

4. A long-term length-of-stay for residential services for substance use disorders:

a. Shall be between thirty (30) days and ninety (90) days in duration;

b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:

(i) Stabilize a recipient's substance use disorder; and

(ii) Help the recipient develop and apply recovery skills; and

c. May include the services listed in subparagraph 1.g. of this paragraph.

5. Residential services for substance use disorders shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

6. To provide residential services for substance use disorders, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and

b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.

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

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

2. Consist of:

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

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

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.

(p)1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a serious mental illness; and

b. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v) Medication prescribing and monitoring;

(vi) Individual outpatient therapy;

(vii) Family outpatient therapy;

(viii) Group outpatient therapy;

(ix) Mobile crisis services;

(x) Crisis intervention;

(xi) Mental health consultation; or

(xii) Family support and basic living skills.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

(i) Reduce conflict; and

(ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on

teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

a. Employ at least one (1) team of multidisciplinary professionals:

(i) Led by a qualified mental health professional; and

(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services provider, a case manager, or a co-occurring disorder specialist;

b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual case records; and

d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

(q)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's treatment plan; and

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

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(r)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; and

b. Designed to maximize the reduction of a mental health disability and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) A screening;

(b) An assessment;

(c) Service planning;

(d) A psychiatric service;

(e) Individual outpatient therapy;

(f) Group outpatient therapy;

(g) Family outpatient therapy; or

(h) Peer support services.

(3) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment for a substance use disorder provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing

supervisor and a behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment if an assessment was performed;
- c. Disposition if a disposition was performed; and
- d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

- a. Cabinet for Health and Family Services upon request; or
- b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

- a. Cabinet for Health and Family Services' personnel; or
- b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the treatment plan if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) The treatment plan of a recipient who continues to receive services shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering practitioner.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10)

days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- (a)1. The Health Insurance Portability and Accountability Act;
2. 42 U.S.C. 1320d-2 to 1320d-8; and
3. 45 C.F.R. Parts 160 and 164; or
- (b)1. 42 U.S.C. 290 ee-3; and
2. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a targeted case management service shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

- a. Behavioral health services organization shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;
(2) Medical record; or
(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 22, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:025, Reimbursement for behavioral health services provided by behavioral health services organizations. To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid

recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as behavioral health services organizations will be affected by this administrative regulation. Currently, there are forty-six (46) entities that provide behavioral health services via DMS's "Impact Plus" program. These entities provide such services as subcontractors of the Department for Behavioral Health, Intellectual and Developmental Disabilities (DBHDID) or the Department for Community Based Services (DCBS.) DMS anticipates that each of the entities will enroll as in the Medicaid Program as BHSOs. Additionally, the following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates,

certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42

U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

907 KAR 15:025. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health service organizations to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided:

(a) To a recipient;

(b) By a behavioral health service organization that meets the provider participation requirements established in 907 KAR 15:020; and

(c) In accordance with the requirements established in 907 KAR 15:020; and

(3) Covered in accordance with 907 KAR 15:020.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code.

(2) The rate per unit for a screening or for crisis intervention shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare

Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; or

5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Physician assistant working under the supervision of a billing supervisor;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor.

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.

(5) The rate per unit for individual outpatient therapy, group

outpatient therapy, or collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist; or
6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed assistant behavior analyst working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; or
5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor; or
6. Licensed professional art therapist associate working under the supervision of a billing supervisor.

(7) Reimbursement for the following services shall be as established on the BHSO Non-Medicare Services Fee Schedule:

- (a) Mobile crisis services;
- (b) Day treatment;
- (c) Peer support services;
- (d) Parent or family peer support services;
- (e) Intensive outpatient program services;

(f) Service planning;

(g) Residential services for substance use disorders;

(h) Screening, brief intervention, and referral to treatment;

(i) Assertive community treatment;

(j) Comprehensive community support services; or

(k) Therapeutic rehabilitation services.

(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. A final version, the department shall use the final version.

(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:020; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 6. Incorporation by Reference. (1) "BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 8, 2014

FILED WITH LRC: July 22, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 15, 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

September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs). This administrative regulation is being promulgated in conjunction with 907 KAR 15:020 (Coverage provisions and requirements regarding services provided by behavioral health services organizations) and the Cabinet for Health and Family Services, Office of Inspector General's BHSO licensure administrative regulation (902 KAR 20:430). To qualify as a provider, a behavioral health services organization must be licensed in accordance with 902 KAR 20:430. BHSOs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; parent or family peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; residential services for a substance use disorder; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. The Department for Medicaid Services (DMS) will reimburse a percent of Medicare (tiered based on practitioner qualifications) for services that are covered by Medicare and per a fee schedule, incorporated by reference, for services not covered by Medicare.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates. Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

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

The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in BHSOs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (New Administrative Regulation)

922 KAR 5:120. Caregiver misconduct registry and appeals.

RELATES TO: KRS Chapter 13B, 209

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and

error resolution for correction of the cabinet's records.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Employee" is defined by KRS 209.032(1)(a).

(5) "Exploitation" is defined by KRS 209.020(9).

(6) "Investigation" is defined by KRS 209.020(10).

(7) "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

(8) "Neglect" is defined by KRS 209.020(16).

(9) "Records" is defined by KRS 209.020(15).

(10) "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

(11) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(12) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry. (1) The cabinet shall establish a caregiver misconduct registry that contains an individual who was:

(a) Providing care to an adult as an employee or otherwise with the expectation of compensation;

(b) The perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and

2. Substantiated on or after July 15, 2014; and

(c) Subject to a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual subject to a validated substantiated finding of adult abuse, neglect, or exploitation shall:

(a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and

(b) Be removed from the caregiver misconduct registry:

1. In accordance with the error resolution process described in Section 5 of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to:

(i) An adult fatality or near fatality related to adult abuse or neglect;

(ii) A criminal conviction related to the incident for which the individual's name was placed on the caregiver misconduct registry; or

(iii) A civil judicial determination related to adult abuse, neglect, or exploitation.

(3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2); and

(b) An individual in accordance with KRS 209.032(3).

(4) The caregiver misconduct registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding. (1) If the cabinet finds that an

employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall:

(a) Send notice of the finding to the perpetrator by regular mail; or

(b) Give the notice of the finding to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice.

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032; and

(e) A statement that the individual subject to a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.

Section 4. Appeals. (1) In accordance with KRS 209.032, if the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall be afforded an opportunity for an administrative hearing.

(2) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only by the authority of state or federal law.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 5 of this administrative regulation.

Section 5. Error Resolution. (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the caregiver misconduct registry query which resulted in the error being identified; and

2. Error contained in the caregiver misconduct registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b)1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 6. Incorporation by Reference. (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 7/14, is incorporated

by reference.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2014

FILED WITH LRC: July 23, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 September 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of a person to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish processes for the caregiver misconduct registry, appeals, and error resolution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a caregiver misconduct registry, including due process and error resolution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth procedures for the state's caregiver misconduct registry.

(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: Based on the limited data available May 2013 through April 2014, there are less than 300 substantiated investigative findings per year in which the perpetrator was acting as an employee, volunteer, or compensated caregiver for a vulnerable adult. These are the findings that would qualify the perpetrator for addition to the registry if other requirements of KRS

209.032, specifically due process, are met. In accordance with the authorizing statute, vulnerable adult services providers are required to query the registry to determine if a prospective employee is subject to a validated substantiated finding of adult abuse, neglect, or exploitation. Methods have also been provided for an individual to conduct a self-query of the registry or request error resolution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals subject to a qualifying substantiated finding of adult abuse, neglect, or exploitation will be afforded due process in accordance the KRS Chapter 13B and KRS 209.032 prior to the individuals' names appearing on the caregiver misconduct registry. Providers and individuals will be directed to a website to conduct queries of the caregiver misconduct registry. Individuals who do not have access to the internet may also submit a paper-based self-query to the cabinet. Procedures have also been outlined for individuals who identify an error in a cabinet record.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Due process in accordance with KRS Chapter 13B and KRS 209.032, queries of the registry, and error resolution requests will be conducted by the cabinet without charge to the affected entities. Affected entities may exercise their rights to counsel, which may entail a related cost outside the cabinet's control.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will benefit the overall protection of vulnerable adults.

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

(a) Initially: The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(b) On a continuing basis: The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are funded through 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: An increase in fees or funding is not 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? Tiering is not applied, as this administrative regulation is applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Office of the Ombudsman, Department for Community Based Services, Office of Administrative and Technology Services, Office of Legal Services, and Division of Administrative Hearings, will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.032

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation. This administrative regulation will generate no new revenues for subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body projects that funds appropriated by the Kentucky General Assembly for the purpose of a registry protecting vulnerable adults will cover the costs of implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The administrative body anticipates ongoing costs associated with this administrative regulation will be within appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of August 7, 2014

Call to Order and Roll Call

The August 2014 meeting of the Administrative Regulation Review Subcommittee was held on Thursday, August 7, 2014, at 1:00 p.m., in Room 154 of the Capitol Annex. Representative Mary Lou Marzian, Co-chair, called the meeting to order, the roll call was taken. The minutes of the July 2014 meeting were approved.

Present were:

Members: Senators Perry Clark, Sara Beth Gregory, Ernie Harris, and Alice Forgy Kerr; and Representatives Jimmie Lee, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Karen Howard, Ange Bertholf, and Betsy Cupp.

Guests: Sherman Nave, Gina Richey, Department of Revenue; Brian Judy, Board of Registration for Professional Geologists; Denise Logsdon, Jeremy Reed, Board of Licensure for Massage Therapy; Matt James, Board of Licensed Diabetes Educators; Karen Waldrop, Department of Fish and Wildlife Resources; Dana Todd, Justice and Public Safety Cabinet; Frederick Higdon, Stephanie Stumbo, Department of Alcoholic Beverage Control; Jack Coleman, Dennis Rodgers, Department of Housing, Buildings and Construction; Stephanie Brammer-Barnes, Vonja Grabeel, Stephanie Hold, Jill Lee, Diona Mullins, Maryellen Mynear, Stuart Owen, Allison Taylor, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Thursday, August 7, 2014, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

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. Sherman Nave, director, and Regina Ritchey, section supervisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to correct the name of the division. Without objection, and with agreement of the agency, the amendments were approved.

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

201 KAR 31:100. Administrative subpoena. Brian Judy, assistant attorney general, represented the board.

In response to a question by Co-Chair Harris, Mr. Judy stated that a geologist involved in or charged with a crime was subject to board subpoena pursuant to this administrative regulation, and the action was triggered by a complaint.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical corrections; and (2) to amend Section 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Massage Therapy: Board

201 KAR 42:035. Application process, exam, and curriculum requirements. Denise Logsdon, chair, and Jeremy W. Reed, assistant attorney general, represented the board.

In response to a question by Senator Clark, Ms. Logsdon stated that this administrative regulation required an interview for each applicant with a criminal history, except for traffic violations. For consistency, each committee followed a standard interview selection process. There have been approximately two (2) to three

(3) interviews monthly, and the interview committee usually met the week prior to the monthly board meeting.

In response to questions by Co-Chair Harris, Ms. Logsdon stated that the board had statutory authority to interview applicants with a felony or misdemeanor history because the board was statutorily obligated to protect the public regarding massage therapy. Massage therapy involved situations in which the public was especially vulnerable, and the board needed to be able to thoroughly assess the character of each licensee in order to fulfill the charge of public protection. Even the investigation of violations pertaining to drug paraphernalia was necessary to ensure that licensees were not working while under the influence. The board was confident that this administrative regulation established adequate requirements regarding breast massage to clarify the proper context for the procedure.

Co-Chair Marzian stated that, because massage therapy was a growing industry, it was important that these administrative regulations be as rigorous as possible.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 4 to clarify that: (a) the board's purpose for the interview of applicants with a criminal history is to assess the applicant's qualifications pursuant to KRS 309.358(3) and 335B.040 relating to good moral character; and (b) the interview shall be conducted pursuant to KRS 309.362(1)(b); (5) to revise the material incorporated by reference to: (a) correct administrative regulation citations; (b) add the statutory citations relating to the board's statutory authority to consider criminal convictions; and (c) comply with the drafting requirements of KRS Chapter 13A; and (6) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:040. Renewal.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 3, and 7 to comply with the drafting requirements of KRS Chapter 13A; (4) to amend Section 1 to clarify the board's purpose of the interview for renewal applicants with a criminal history or who have been disciplined by another board; (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response; and (6) to revise the material incorporated by reference to: (a) add statutory citations relating to the board's authority to consider criminal history and discipline by other boards; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:060. Code of ethics and standards of practice for massage therapists.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:080. Programs of massage therapy instruction.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 3 to: (a) add what information shall be required to be submitted with the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Long Form; (b) clarify that the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form may include documentation of added listed items if these have changed since the program's initial application or last renewal; (c) require that each Short Form shall include updated information on student completion, examination pass rates, licensure rates, and placement rates; and (d) clarify what the applicant's submission of documentation with the Short Form may include; and (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:110. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 10, and 11 and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 5 to add a deadline for the submission of a preapproval request for a continuing education course; (3) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response; and (4) to revise the summary of material incorporated by reference to correct an administrative regulation citation. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Diabetes Educators: Board

201 KAR 45:110. Supervision and work experience. Matt James, assistant attorney general, represented the board.

Senator Kerr stated that, when the authorizing legislation for these administrative regulations was under consideration by the General Assembly, the diabetes educator groups predicted there would be 250 educators. Kentucky now has over 500 educators, and other states are following Kentucky's lead.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend the Application for Licensure to correct a statutory citation; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A; (3) to update the Apprentice Renewal Application form to: (a) correct a statutory citation; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 45:170. Application procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to

amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A; (4) to amend Section 1 to add a cross reference to the Application for Licensure Form, DE-01 incorporated by reference in 201 KAR 45:110; (5) to amend Section 3 to add that an applicant for an apprentice diabetes educator permit shall include the Supervised Work Experience Report, Form DE-05 incorporated by reference in 201 KAR 45:110 because this form is required to be submitted with the permit application; (6) to amend Section 4 to delete the Application for Licensure that is already incorporated in an existing administrative regulation; (7) to update the Application for Apprentice Diabetes Educator Permit to: (a) add a cross reference to 201 KAR 45:110; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; and (8) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 45:180. Diabetes education courses.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 2 and 3 to add and incorporate by reference the Application for a KBLDE Board Approved Course, Form DE-07; (3) to amend Section 2 to add what information shall accompany the application form; (4) to update the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct an agency response. Without objection, and with agreement of the agency, the amendments were approved.

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. Karen Waldrop, wildlife division director, represented the department.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Telecommunicators

500 KAR 4:011. Repeal of 500 KAR Chapter 4. Dana Todd, assistant general counsel, represented the cabinet.

Department of Criminal Justice Training: General Traffic

503 KAR 3:005. Definitions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add additional relevant 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 the TITLE and Section 1 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 for clarity; (2) to amend Sections 3 and 6 to update statutory citations; and (3) to amend Sections 4, 6, 8, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to questions by Co-Chair Harris, Ms. Todd

stated that jewelry was regulated for uniformity and clarity with other, longer training programs in which trainees live on campus and wear uniforms. Simple, minimal jewelry was permitted.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 6 to update statutory citations; and (2) to amend Sections 1, 4, 6, 8, 9, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to: (a) update a statutory citation; and (b) clarify exceptions to the requirement that a trainee must reside on campus; and (2) to amend Sections 1, 4, 6, 8, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Malt Beverage Equipment, Supplies and Service

804 KAR 11:040. Growlers. Frederick Higdon, commissioner, and Stephanie Stumbo, malt beverage administrator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to: (a) clarify that the cleaning and sanitizing requirements do not apply to a new growler that is being filled for the first time; (b) clarify the temperature requirements for manual washing in a three (3) compartment sink; and (c) delete the numerical limitations for malt beverage taps and tubes. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:040. Vehicle identification. Jack Coleman, deputy commissioner, and Dennis Rodgers, field operations manager, represented the division.

In response to questions by Co-Chair Harris, Mr. Rodgers stated that these administrative regulation were primarily changes to comply with federal mandates. These administrative regulations were not in response to federal OSHA regulations.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

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.

A motion was made and seconded to approve the following amendment: to amend Section 18 to insert a statutory citation. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums. Diona Mullins, policy advisor, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Mullins stated that the cabinet chose the price index used in this

administrative regulation through a U.S. Department of Commerce calculation.

900 KAR 6:125. Certificate of need annual surveys.

Department for Public Health: Controlled Substances

902 KAR 55:045. Exempt prescription products. Stephanie Hold, director of audits and investigations, and Maryellen Myneer, inspector general, represented the cabinet.

In response to questions by Co-Chair Harris, Ms. Hold stated that these requirements were amended due to a conflict between the federal and Kentucky list of exemptions. Drugs on the exemption list do not have addiction concerns or are present in such minute amounts to lower the risk of addiction. The cabinet would continue to track and monitor dosages.

902 KAR 55:090. Exempt anabolic steroid products.

Division of Public Health Protection and Safety: Radon

902 KAR 95:040. Radon Contractor Certification Program. Vonja Grabeel, facilities supervisor, and Allyson Taylor, policy advisor, represented the cabinet.

Co-Chair Marzian stated that this was a good move forward to support past legislation on this subject.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to include additional relevant citations; (2) to amend Sections 1 and 2 to delete provisions that conflicted with or repeated statutory provisions; (3) to amend Section 3 to delete the registration fees for the installation of mitigation systems as the fees are not expressly authorized by KRS Chapter 211; and (4) to amend Sections 1 through 7 and 12 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Commissioner's Office: Payment and Services

907 KAR 3:111. Repeal of 907 KAR 3:110. Stuart Owen, regulation coordinator, represented the department.

The following administrative regulations were deferred to the September 12, 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.

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.

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

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.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

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

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.

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 1:45 p.m. until September 12, 2014 at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of July 3, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of July 3, 2014, having been referred to the Committee on June 4, 2014 and July 2, 2014, pursuant to KRS 13A.290(6):

301 KAR 2:132 (Referred June 4, 2014)
301 KAR 2:300 (Referred July 2, 2014)

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 3, 2014 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of August 7, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of August 7, 2014, having been referred to the Committee on August 6, 2014, pursuant to KRS 13A.290(6):

301 KAR 1:201

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 August 7 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 11, 2014

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of August 11, 2014, having been referred to the Committee on August 6, 2014, pursuant to KRS 13A.290(6):

704 KAR 3:346
704 KAR 3:370

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 August 11, 2014, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 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

C - 9

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 41 of the *Administrative Register of Kentucky*.

Technical Amendment Index

C - 13

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 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

C - 14

The Subject Index is a general index of administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
VOLUME 40					
The administrative regulations listed under VOLUME 40 are those that were originally published in Volume 40 (last year's) issue of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the 2014 Kentucky Administrative Regulations Service was published.					
SYMBOL KEY:			Replaced	2778	7-7-14
* Statement of Consideration not filed by deadline			907 KAR 15:010E	1688	
** Withdrawn, not in effect within 1 year of publication			Reprinted	2098	12-30-13
*** Withdrawn before being printed in Register			Replaced	2779	7-7-14
**** Emergency expired after 180 days			907 KAR 15:015E	1691	12-30-13
(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.			Replaced	2788	7-7-14
			907 KAR 18:001E	2404	3-24-14
			Replaced		See 41 Ky.R.
			907 KAR 18:005E	2405	3-24-14
			Replaced		See 41 Ky.R.
EMERGENCY ADMINISTRATIVE REGULATIONS:			908 KAR 2:240E	2112	2-6-14
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Replaced	2793	6-18-14
			908 KAR 2:250E	2115	2-6-14
			Replaced	2795	6-18-14
30 KAR 6:010E	2401	3-24-14	ORDINARY ADMINISTRATIVE REGULATIONS:		
Replaced		See 41 Ky.R.	16 KAR 2:010		
907 KAR 1:019E	1573	12-30-13	Amended	2584	See 41 Ky.R.
Replaced	2703	7-7-14	16 KAR 4:060		
907 KAR 1:030E	1581	12-26-13	Amended	2581	See 41 Ky.R.
Replaced	2709	7-7-14	30 KAR 6:010	2646	See 41 Ky.R.
907 KAR 1:038E	1585	12-26-13	102 KAR 1:270		
Replaced	2712	7-7-14	Amended	2320	
907 KAR 1:039E	1591	12-26-13	As Amended	2675	7-7-14
Replaced	2716	7-7-14	102 KAR 1:320		
907 KAR 1:044E	1595	12-30-13	Amended	2321	
Replaced	2718	7-7-14	As Amended	2675	7-7-14
907 KAR 1:045E	1600	12-30-13	103 KAR 43:330		
Replaced	2721	7-7-14	Amended	2589	See 41 Ky.R.
907 KAR 1:054E	1603	12-30-13	109 KAR 15:020		
Replaced	2722	7-7-14	Amended	2194	
907 KAR 1:082E	1617	12-30-13	As Amended	2411	
Replaced	2736	7-7-14	As Amended	2678	6-25-14
907 KAR 1:604E	1631	12-26-13	201 KAR 3:025		
Replaced	2749	7-7-14	Amended	2325	7-7-14
907 KAR 1:631E	1638	12-26-13	201 KAR 3:090		
Replaced	2755	7-7-14	Amended	2326	
907 KAR 1:632E	1642	12-26-13	As Amended	2678	7-7-14
Replaced	2757	7-7-14	201 KAR 8:016	2385	
907 KAR 1:913E(r)	1646	12-26-13	As Amended	2679	See 41 Ky.R.
907 KAR 3:005E	1648	12-26-13	201 KAR 8:532		
Replaced	2759	7-7-14	Amended	2328	
907 KAR 8:005E	1655	12-26-13	As Amended	2680	6-18-14
Replaced	2765	7-7-14	201 KAR 8:550		
907 KAR 8:010E	1657		Amended	2332	
Reprinted	2095	12-26-13	201 KAR 8:562		
Replaced	2765	7-7-14	Amended	2338	
907 KAR 8:015E	1660	12-26-13	As Amended	2683	6-18-14
Replaced	2766	7-7-14	201 KAR 8:571		
907 KAR 8:020E	1662	12-26-13	Amended	2343	See 41 Ky.R.
Replaced	2767	7-7-14	201 KAR 9:300		
907 KAR 8:025E	1665	12-26-13	Repealed	2648	8-1-14
Replaced	2768	7-7-14	201 KAR 9:301(r)	2648	8-1-14
907 KAR 8:030E	1668	12-26-13	201 KAR 9:305		
Replaced	2769	7-7-14	Amended	2591	See 41 Ky.R.
907 KAR 8:035E	1671	12-26-13	201 KAR 9:307		
Replaced	2770	7-7-14	Amended	2592	See 41 Ky.R.
907 KAR 10:014E	1673	12-26-13	201 KAR 11:011		
Replaced	2771	7-7-14	Amended	2810	
907 KAR 12:020E	2109	2-6-14	201 KAR 11:105		
Withdrawn		7-8-14	Amended	2811	
907 KAR 13:005E	1677	12-26-13	201 KAR 11:121		
Replaced	2776	7-7-14	Amended	2812	
907 KAR 13:010E	1680	12-26-13	201 KAR 14:085		
Replaced	2776	7-7-14	Amended	1863	See 41 Ky.R.
907 KAR 13:015E	1683	12-26-13	201 KAR 14:090		
Replaced	2777	7-7-14	Amended	2195	
907 KAR 15:005E	1686	12-30-13			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
As Amended	2686	7-7-14	Amended	2618	See 41 Ky.R.
201 KAR 14:115			704 KAR 3:345		
Amended	1866		Repealed	2925	8-11-14
As Amended	2688	7-7-14	704 KAR 3:346(r)	2925	8-11-14
201 KAR 18:192			704 KAR 3:370	2651	See 41 Ky.R.
Amended	2593	See 41 Ky.R.	739 KAR 2:090	2231	
201 KAR 20:056			Amended	2798	See 41 Ky.R.
Amended	2596	See 41 Ky.R.	803 KAR 2:300		
201 KAR 20:057			Amended	2823	
Amended	2599	See 41 Ky.R.	803 KAR 2:306		
201 KAR 20:161			Amended	2825	
Amended	2602	See 41 Ky.R.	803 KAR 2:308		
201 KAR 20:360			Amended	2828	
Amended	2346	See 41 Ky.R.	803 KAR 2:309		
201 KAR 20:370			Amended	2830	
Amended	2605	See 41 Ky.R.	803 KAR 2:314		
201 KAR 20:411			Amended	2832	
Amended	2607	See 41 Ky.R.	803 KAR 2:317		
201 KAR 20:450			Amended	2834	
Amended	2609	See 41 Ky.R.	803 KAR 2:318		
201 KAR 22:040			Amended	2837	
Amended	2612	See 41 Ky.R.	803 KAR 2:400		
201 KAR 22:160			Amended	2839	See 41 Ky.R.
Amended	2227	See 41 Ky.R.	803 KAR 2:404		
201 KAR 23:015			Amended	2841	
Amended	2614	See 41 Ky.R.	803 KAR 2:406		
201 KAR 34:060	2387	See 41 Ky.R.	Amended	2843	See 41 Ky.R.
201 KAR 42:035			803 KAR 2:412		
Amended	2202		Amended	2845	See 41 Ky.R.
201 KAR 42:040			803 KAR 2:421		
Amended	2204		Amended	2849	
201 KAR 42:060			803 KAR 2:423		
Amended	2206		Amended	2851	
201 KAR 42:080			803 KAR 2:500		
Amended	2207		Amended	2852	
201 KAR 42:110			803 KAR 2:505		
Amended	2210		Amended	2854	See 41 Ky.R.
201 KAR 43:100	2649	See 41 Ky.R.	803 KAR 2:551	2926	
301 KAR 1:201			803 KAR 50:010		
Amended	2814	See 41 Ky.R.	Amended	1440	
301 KAR 2:132			As Amended	2695	7-7-14
Amended	2349		804 KAR 1:051(r)	2391	7-7-14
As Amended	2689	7-7-14	804 KAR 1:100		
301 KAR 2:300			Amended	2857	
Amended	2615	See 41 Ky.R.	804 KAR 9:050		
500 KAR 8:030			Amended	2358	
Amended	2219		As Amended	2702	7-7-14
As Amended	2692	7-7-14	804 KAR 11:040	2927	
501 KAR 6:020			806 KAR 30:020		
Amended	2353	See 41 Ky.R.	Amended	2622	See 41 Ky.R.
501 KAR 6:110			806 KAR 38:100		
Amended	2819	See 41 Ky.R.	Amended	2623	See 41 Ky.R.
505 KAR 1:110			806 KAR 47:010		
Amended	2821		Amended	2629	See 41 Ky.R.
600 KAR 6:040			815 KAR 7:120		
Amended	2355	7-1-14	Amended	2630	8-1-14
601 KAR 1:230	2389		815 KAR 7:125		
As Amended	2694	7-1-14	Amended	2633	8-1-14
601 KAR 14:020			900 KAR 6:055		
Amended	2223		Amended	2858	
603 KAR 10:001	2019		900 KAR 6:070		
Amended	2453		Amended	2860	
603 KAR 10:010			900 KAR 6:075		
Amended	1889		Amended	2862	
Amended	2456		900 KAR 7:030		
603 KAR 10:020	2022		Amended	2865	
Amended	2474		902 KAR 30:001		
603 KAR 10:030	2027		Amended	2869	
Amended	2478		902 KAR 30:110		
702 KAR 7:065			Amended	2872	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
902 KAR 30:120			As Amended	2767	7-7-14
Amended	2876		907 KAR 8:025	2048	
902 KAR 30:130			Amended	2550	
Amended	2879		As Amended	2768	7-7-14
902 KAR 30:150			907 KAR 8:030	2051	
Amended	2883		As Amended	2769	7-7-14
902 KAR 30:160			907 KAR 8:035	2054	
Amended	2887		Amended	2552	
902 KAR 30:180			As Amended	2770	7-7-14
Amended	2889		907 KAR 10:014		
902 KAR 30:200			Amended	2009	
Amended	2893		Amended	2554	
902 KAR 55:045			As Amended	2771	7-7-14
Amended	2635		907 KAR 10:825		
902 KAR 55:090			Amended	1491	
Amended	2639		Amended	2305	
907 KAR 1:019			907 KAR 13:005	2056	
Amended	1933		As Amended	2776	7-7-14
As Amended	2703	7-7-14	907 KAR 13:010	2058	
907 KAR 1:030			Amended	2560	
Amended	1941		As Amended	2776	7-7-14
As Amended	2709	7-7-14	907 KAR 13:015	2062	
907 KAR 1:038			As Amended	2777	7-7-14
Amended	1945		907 KAR 15:005	2064	
Amended	2481		Amended	2564	
As Amended	2712	7-7-14	As Amended	2778	7-7-14
907 KAR 1:039			907 KAR 15:010	2066	
Amended	1951		Amended	2566	
As Amended	2716	7-7-14	As Amended	2779	7-7-14
907 KAR 1:044			907 KAR 15:015	2076	
Amended	1955		Amended	2577	
Amended	2487		As Amended	2788	7-7-14
As Amended	2718	7-7-14	907 KAR 18:001	2658	See 41 Ky.R.
907 KAR 1:045			907 KAR 18:005	2660	See 41 Ky.R.
Amended	1959		908 KAR 2:240	2234	
Amended	2492		As Amended	2793	6-18-14
As Amended	2721	7-7-14	908 KAR 2:250	2236	
907 KAR 1:054			As Amended	2795	6-18-14
Amended	1962		910 KAR 2:040		
Amended	2495		Amended	2361	
As Amended	2722	7-7-14	AmComments	2801	See 41 Ky.R.
907 KAR 1:082			921 KAR 1:430		
Amended	1977		Amended	2642	8-1-14
Amended	2510		921 KAR 2:055		
As Amended	2736	7-7-14	Amended	2369	See 41 Ky.R.
907 KAR 1:604			921 KAR 2:060		
Amended	1991		Amended	2910	
Amended	2524		921 KAR 3:030		
As Amended	2749	7-7-14	Amended	2912	
907 KAR 1:631			921 KAR 3:042		
Amended	1998		Amended	2914	
Amended	2532		921 KAR 3:050		
As Amended	2755	7-7-14	Amended	2917	
907 KAR 1:632			921 KAR 3:060		
Amended	2034		Amended	2921	
As Amended	2536		921 KAR 3:070		
907 KAR 1:835			Amended	2373	See 41 Ky.R.
Amended	2899		922 KAR 1:320		
907 KAR 3:005			Amended	2377	See 41 Ky.R.
Amended	2002		922 KAR 1:480		
Amended	2540		Amended	2382	
As Amended	2759	7-7-14			
907 KAR 8:005					
As Amended	2038				
907 KAR 8:010					
As Amended	2765	7-7-14			
907 KAR 8:015					
Amended	2040				
As Amended	2765	7-7-14			
907 KAR 8:020					
Amended	2043				
As Amended	2547				
	2766	7-7-14			
	2045				

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** 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

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
VOLUME 41					
SYMBOL KEY:			Amended	298	
* Statement of Consideration not filed by deadline			201 KAR 2:040		
** Withdrawn before being printed in Register			Amended	300	
**** Emergency expired after 180 days			201 KAR 5:055	672	
(r) Repealer regulation: KRS 13A.310-on the effective date of an			201 KAR 8:016		See 40 Ky.R.
administrative regulation that repeals another, the regulations			As Amended	257	6-18-14
compiler shall delete the repealed administrative regulation and			201 KAR 8:550		See 40 Ky.R.
the repealing administrative regulation.			Am Comments	56	
			201 KAR 8:571		See 40 Ky.R.
			As Amended	257	
EMERGENCY ADMINISTRATIVE REGULATIONS:			201 KAR 9:305		See 40 Ky.R.
(Note: Emergency regulations expire 180 days from the date filed;			As Amended	12	8-1-14
or 180 days from the date filed plus number of days of requested			201 KAR 9:307		See 40 Ky.R.
extension, or upon replacement or repeal, whichever occurs first.)			As Amended	13	8-1-14
30 KAR 6:010E		See 40 Ky.R.	201 KAR 14:085		See 40 Ky.R.
Replaced	10	8-1-14	As Amended	13	8-1-14
31 KAR 4:130E	367	7-22-14	201 KAR 15:015	336	
31 KAR 4:140E	372	7-22-14	201 KAR 18:192		See 40 Ky.R.
31 KAR 5:010E	375	7-22-14	As Amended	15	8-1-14
103 KAR 15:180E	4	6-5-14	201 KAR 20:056		See 40 Ky.R.
405 KAR 8:030E	379	8-6-14	As Amended	17	8-1-14
405 KAR 8:040E	389	8-6-14	201 KAR 20:057		See 40 Ky.R.
405 KAR 10:025E	235	6-30-14	As Amended	19	7-16-14
804 KAR 4:230E	237	7-15-14	201 KAR 20:161		See 40 Ky.R.
804 KAR 4:400E	239	7-15-14	As Amended	22	8-1-14
804 KAR 4:410E	240	7-15-14	201 KAR 20:360		See 40 Ky.R.
902 KAR 20:430E	242	7-15-14	As Amended	24	8-1-14
902 KAR 20:440E	250	7-15-14	201 KAR 20:370		See 40 Ky.R.
907 KAR 15:005E	401	7-22-14	As Amended	26	8-1-14
907 KAR 15:020E	404	7-22-14	201 KAR 20:411		See 40 Ky.R.
907 KAR 15:025E	413	7-22-14	As Amended	27	8-1-14
907 KAR 18:001E		See 40 Ky.R.	201 KAR 20:450		See 40 Ky.R.
Replaced	44	8-1-14	As Amended	29	8-1-14
907 KAR 18:005E		See 40 Ky.R.	201 KAR 22:040		See 40 Ky.R.
Replaced	44	8-1-14	As Amended	31	8-1-14
922 KAR 1:360E	417	8-1-14	201 KAR 22:160		See 40 Ky.R.
922 KAR 2:160E	423	8-1-14	As Amended	32	8-1-14
922 KAR 5:070E	432	7-23-14	201 KAR 23:015		See 40 Ky.R.
922 KAR 5:120E	436	7-23-14	As Amended	32	8-1-14
			201 KAR 30:125		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	552	
16 KAR 2:010		See 40 Ky.R.	201 KAR 30:180		
As Amended	8	8-1-14	Amended	553	
16 KAR 2:120			201 KAR 30:200		
Amended	533		Amended	556	
16 KAR 4:060		See 40 Ky.R.	201 KAR 31:100	210	
As Amended	256		As Amended	441	
19 KAR 9:080			201 KAR 32:035		
Amended	295		Amended	558	
30 KAR 6:010		See 40 Ky.R.	201 KAR 33: 010		
As Amended	10	8-1-14	Amended	560	
31 KAR 3:030	669		201 KAR 34:060		See 40 Ky.R.
31 KAR 4:130			As Amended	33	
Amended	536		201 KAR 36:060		
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** 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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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 to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

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