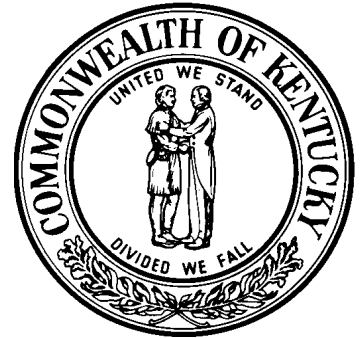


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 42, NUMBER 1
WEDNESDAY, JULY 1, 2015

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 15, 2015.

ARRS – JULY 14, 2015 TENTATIVE AGENDA.....	1
REGULATION REVIEW PROCEDURE	5

EMERGENCIES

Department of Workforce Investment	6
--	---

AS AMENDED

Council on Postsecondary Education.....	9
Department of Revenue.....	12
Board of Emergency Medical Services	17
Department of Corrections.....	21
Transportation Cabinet: Department of Vehicle Regulation.....	22
Kentucky Bicycle and Bikeways Commission	25
Board of Education	26
Department of Financial Institutions	35
Horse Racing Commission	36

AMENDED AFTER COMMENTS

Board of Education	38
Department for Natural Resources	46
CHFS: Department for Medicaid Services	62

PROPOSED AMENDMENTS

Education Professional Standards Board.....	72
Personnel Cabinet.....	76
Real Estate Appraisers Board.....	95
Department of Fish and Wildlife Resources	97
Department of Corrections.....	99
Board of Education	101
Department for Workplace Standards.....	108
Department of Alcoholic Beverage Control	126
Department of Housing, Buildings and Construction	127
Department of Charitable Gaming	138
CHFS: Department for Public Health	145
CHFS: Department for Medicaid Services	148
CHFS: Department for Aging and Independent Living.....	161
CHFS: Department for Community Based Services.....	170

NEW ADMINISTRATIVE REGULATIONS

Department of Workforce Investment	196
Department of Workers' Claims.....	198
Department of Charitable Gaming	209
CHFS: Department for Community Based Services	216

ARRS Report	223
OTHER COMMITTEE REPORTS	226

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	A - 2
KRS Index.....	A - 6
Technical Amendments.....	A - 8
Subject Index	A - 9

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 14, 2015, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1-4 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2015 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 42, Kentucky Register, page 318 (short form: 42 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2015 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative Gregory D. Stumbo
House Speaker

Senate and House Members

Senator David P. Givens
President Pro Tempore

Representative Jody Richards
Speaker Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Representative Rocky Adkins
Majority Floor Leader

Senator Ray Jones
Minority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chair

Representative Sannie Overly
Majority Caucus Chair

Senator Gerald Neal
Minority Caucus Chair

Representative Stan Lee
Minority Caucus Chair

Senator Jimmy Higdon
Majority Whip

Representative Johnny Bell
Majority Whip

Senator Julian Carroll
Minority Whip

Representative Jim DeCesare
Minority Whip

Marcia Seiler, Acting Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Ernie Harris, Co-Chair
Representative Mary Lou Marzian, Co-Chair
Senator Julie Raque Adams
Senator Perry B. Clark
Senator Alice Kerr
Representative Denny Butler
Representative Will Coursey
Representative Tommy Turner

Staff

Donna Little
Emily Caudill
Sarah Amburgey
Emily Harkenrider
Karen Howard
Carrie Klaber
Angela Bertholf
Betsy Cupp

VOLUME 42, NUMBER 1 – JULY 1, 2015

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JULY 14, 2015, at 1:00 p.m., Room 149 Capitol Annex**

BOARD OF ELECTIONS

Statewide Voter Registration

31 KAR 3:040. Electronic Voter Registration System. (Deferred from June)

Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers. (Deferred from June)

31 KAR 4:180 & E. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located. ("E" expires 11/1/2015)

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary**

State Investment Commission

200 KAR 14:011. Qualified Investments.

200 KAR 14:081. Repurchase agreement.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy**

Board

201 KAR 2:015. Continuing education.

201 KAR 2:360 & E. Naloxone dispensing. ("E" expires 11/10/2015)

Board of Hairdressers and Cosmetologists

Board

201 KAR 12:083. Educational requirements. (Deferred from June)

Board of Nursing

Board

201 KAR 20:063. Restrictions on use of amphetamine-like anorectic controlled substances.

Board of Licensed Diabetes Educators

Board

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

201 KAR 45:170. Application procedures.

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

Fish

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public lands and other federally owned areas.

301 KAR 2:300. Black bear seasons and requirements. (Not Amended After Comments)

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Forestry**

Forestry

402 KAR 3:010. Timber sales.

402 KAR 3:030. Best management practices for timber harvesting operations.

402 KAR 3:050. Bad actor notice provisions.

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

Abuse Investigation

500 KAR 13:020. Internal Investigations Branch.

Parole Board

Board

501 KAR 1:080. Parole Board policies and procedures. (Not Amended After Comments) (Deferred from June)

Law Enforcement Council

Council

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers**

Motor Carriers

601 KAR 1:112 & E. Transportation network company. ("E" expires 7/1/2015) (Amended After Comments)(Deferred from April)

VOLUME 42, NUMBER 1 – JULY 1, 2015

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education

Office of Instruction

704 KAR 3:370. Professional growth and effectiveness system. (Amended After Comments)

Kindergartens and Nursery Schools

704 KAR 5:070. Common kindergarten entry screener. (Not Amended After Comments)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Advertising Distilled Spirits and Wine

804 KAR 1:061. Repeal of 804 KAR 1:060.

Licensing

804 KAR 4:370. Entertainment destination center license.

Local Administrators

804 KAR 10:010. County alcoholic beverage control administrator.

804 KAR 10:020. City alcoholic beverage control administrator.

804 KAR 10:025. Urban-county alcoholic beverage control administrator.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas

Oil and Gas

805 KAR 1:100. Commission's rules of procedure; spacing of deep well drilling; wildcat wells and pooling of interests. (Amended After Comments)

805 KAR 1:130. Administrative regulation relating to casing, cementing, plugging, gas detection and blow-out prevention in oil and gas wells. (Amended After Comments)

805 KAR 1:140. Directional and horizontal wells. (Amended After Comments)

805 KAR 1:170. Content of the operations and reclamation plan. (Amended After Comments)

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions

Check Cashing

808 KAR 9:010. Administration and enforcement of KRS 286.9-140 to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer.

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:020. Claims of exemption.

808 KAR 12:021. Licensing and registration.

808 KAR 12:110. Report of condition.

Office of Occupations and Professions
Board of Home Inspectors

Board

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

Department of Housing, Buildings and Construction
Electrical Division

Electrical

815 KAR 35:015. Certification of electrical inspectors.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan

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

Office of the Health Benefit and Health Information Exchange

Health Benefit Exchange

900 KAR 10:010. Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans.

900 KAR 10:020. KHBE small business health options program.

900 KAR 10:040. KHBE Consumer Assistance Program and kynector certification. (Not Amended After Comments)

900 KAR 10:050. Individual agent participation with the Kentucky Health Benefit Exchange.

900 KAR 10:100. Appeals of eligibility determinations for KHBE participation and insurance affordability programs.

900 KAR 10:110. KHBE formal resolution process related to SHOP employers and employees.

Department for Public Health
Division of Public Health Protection and Safety

Sanitation

902 KAR 10:022. Repeal of 902 KAR 10:020 and 10:021. (Deferred from June)

Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center. (Amended After Comments) (Deferred from May)

902 KAR 20:180. Psychiatric hospitals; operation and services. (Deferred from June)

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services. (Deferred from June)

902 KAR 20:400. Limited services clinics. (Amended After Comments)(Deferred from May)

VOLUME 42, NUMBER 1 – JULY 1, 2015

Food and Cosmetics

- 902 KAR 45:011. Repeal of 902 KAR 45:010, 45:030, 45:040, 45:050, 45:060, and 45:130. (Deferred from June)
- 902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and restricted food concessions. (Not Amended After Comments)
- 902 KAR 45:120. Inspection and permit fees: hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.
- 902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations. (Not Amended After Comments)

Department for Medicaid Services Division of Community Alternatives

Medicaid Services

- 907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expires 8/1/2015) (Not Amended After Comments) (Deferred from May)

Division of Policy and Operations

Medicaid Services

- 907 KAR 1:046. Community mental health center primary care services. (Amended After Comments) (Deferred from May)
- 907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Psychiatric Residential Treatment Facility Services and Reimbursement

- 907 KAR 9:010. Reimbursement for non-outpatient Level I and Level II psychiatric residential treatment facility services. (Deferred from June)

Hospital Service Coverage and Reimbursement

- 907 KAR 10:830. Acute care inpatient hospital reimbursement. (Amended After Comments)

Department for Community Based Services Division of Family Support

Supplemental Nutrition Assistance Program

- 921 KAR 3:060 & E. Administrative disqualification hearings and penalties. ("E" expires 10/27/2015)
- 921 KAR 3:070 & E. Fair Hearings. ("E" expires 10/27/2015)

REMOVED FROM THE JULY AGENDA

GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists

Board

- 201 KAR 12:110. School license. (Deferred from June)(Withdrawn by agency 6/17/15)

Board of Medical Imaging and Radiation Therapy

Board

- 201 KAR 46:010. Definitions for 201 KAR Chapter 46. (Comments Received)
- 201 KAR 46:020. Fees. (Comments Received)
- 201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists. (Comments Received)
- 201 KAR 46:040. Medical imaging technologist, advanced imaging professional and radiation therapist licenses. (Comments Received)
- 201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists. (Comments Received)
- 201 KAR 46:050. Provisional training license for medical imaging technologists and radiation therapists. (Comments Received)
- 201 KAR 46:060. Continuing education requirements. (Comments Received)
- 201 KAR 46:070. Violations and enforcement. (Deferred from June)
- 201 KAR 46:081. Limited x-ray machine operator. (Comments Received)

TRANSPORTATION CABINET Department of Highways Division of Maintenance

Traffic

- 603 KAR 5:155. Removal and pruning of vegetation. (Comments Received)

Billboards

- 603 KAR 10:002. Definitions for 603 KAR Chapter 10. (Comments Received)
- 603 KAR 10:010. Static advertising devices. (Comments Received)
- 603 KAR 10:021. Electronic advertising devices. (Comments Received)

PUBLIC PROTECTION CABINET Horse Racing Commission

Thoroughbred Racing

- 810 KAR 1:300. International medication protocol as a condition of a race. (Comments Received)

Harness Racing

- 811 KAR 1:300. International medication protocol as a condition of a race. (Comments Received)

Quarter Horse, Appaloosa and Arabian Racing

- 811 KAR 2:300. International medication protocol as a condition of a race. (Comments Received)

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety

Health Services and Facilities

- 902 KAR 20:160. Chemical dependency treatment services and facility specifications. (Comments Received, SOC ext.)

VOLUME 42, NUMBER 1 – JULY 1, 2015

Department for Medicaid Services Division of Policy and Operations

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 9:005. Non-outpatient Level I and Level II psychiatric residential treatment facility service and coverage policies. (Comments Received, SOC ext.)

907 KAR 9:015. Coverage provisions and requirements regarding outpatient services provided by Level I or Level II psychiatric residential treatment facilities. (Comments Received, SOC ext.)

907 KAR 9:020. Reimbursement provisions and requirements regarding outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities. (Comments Received, SOC ext.)

Hospital Service Coverage and Reimbursement

907 KAR 10:014. Outpatient hospital service coverage provisions and requirements. (Comments Received, SOC ext.)

907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services. (Comments Received, SOC ext.)

907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services. (Comments Received, SOC ext.)

907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services. (Comments Received, SOC ext.)

Behavioral Health

907 KAR 15:080. Coverage provisions and requirement regarding outpatient chemical dependency treatment center services. (Comments Received, SOC ext.)

907 KAR 15:085. Reimbursement provisions and requirements regarding outpatient chemical dependency treatment center services. (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
787 KAR 2:040E

KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs established by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This new emergency administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas implementing the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Section 3101 et seq. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) by July 1, 2015 to commence the implementation of WIOA and to prevent a potential loss of federal funds. A new ordinary administrative regulation is not sufficient to meet the deadlines established by the federal law. 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
THOMAS O. ZAWACKI, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(New Emergency Administrative Regulation)

787 KAR 2:040E. Local workforce development area governance.

RELATES TO: KRS 151B.020(6), 29 U.S.C. 3101 et seq.
STATUTORY AUTHORITY: KRS 151B.020(6)

EFFECTIVE: May 21, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. In addition to the minimum federal requirements set forth in 29 U.S.C. 3122, this administrative regulation provides further guidance and clarification necessary for effective local implementation activities.

Section 1. Local workforce development board membership criteria and operating guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification, Policy Number 15-001.

Section 2. Interlocal agreement. Each local elected official of a unit of general local government within a local workforce

development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities, Policy Number 15-002.

Section 3. Partnership agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement, Policy Number 15-003.

Section 4. Identification of regions and designation of local workforce development areas. The process and procedures for the identification of regions and the designation of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with the Identification of Regions and Designation of Local Workforce Development Areas, Policy Number 15-004.

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

(a) The "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001, July 1, 2015;

(b) The "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002, March 4, 2015;

(c) The "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003, October 1, 2015; and

(d) The "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004, May 14, 2015.

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

THOMAS O. ZAWACKI, Secretary

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: May 21, 2015 at 1 p.m.

CONTACT PERSON: Beth Kuhn, Commissioner; Kentucky Department of Workforce Investment; 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-0372, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Kuhn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the membership criteria and operating guidelines of local workforce development boards, requires interlocal and partnership agreements for the local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3101 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes in that it provides guidance and clarification regarding local workforce development board

membership criteria and operating guidelines and clarification of the roles and responsibilities of the chief local elected officials and the local elected officials with regards to the interlocal and partnership agreements implementing the WIOA. It also establishes the process for the identification of regions and the designation of local workforce development areas consistent with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the cabinet in implementing the WIOA and will help qualify for the continued receipt of federal funds.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Office of the Governor, Kentucky Workforce Investment Board or its successor, local workforce development areas, along with their workforce development boards, chief local elected officials, and local elected officials, will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The chief local elected official in each local area will have to appoint members of the local boards in accordance with the "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001 and the local boards will have to operate in accordance with the policy. All local elected officials on behalf of their general unit of local government will have to enter into interlocal agreements that comply with the "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002. Each chief local elected official, representing the local elected officials, and the designated chair, representing the local workforce development board, will have to enter into a partnership agreement that complies with the "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003. The process and procedures for the identification of regions and the designation of local workforce development areas in Kentucky shall be in compliance with "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are minimal costs to the entities such as legal fees needed to draft the interlocal and partnership agreements and to implement in order to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local elected officials, chief local elected officials, and workforce development boards will have a clearer understanding of their roles and responsibilities under WIOA as a result of compliance with this administrative regulation.

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

(a) Initially: It is estimated the costs to the administrative bodies to implement this administrative regulation will be minimal initially. The costs may be covered by federal WIA funds solely

allocated for WIOA transition activities.

(b) On a continuing basis: It is estimated the costs to the administrative bodies to implement this administrative regulation will be negligible 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 WIA funding is available for WIOA transition activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this 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 all chief local elected officials, local elected officials, local workforce development areas, and local workforce development boards will be impacted 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? Office of the Governor, Education and Workforce Development Cabinet, Kentucky Workforce Investment Board or its successor, Local Elected Officials, Chief Local Elected Officials, Local Workforce Development Boards, Local Workforce Development Areas

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.020(6) and 29 U.S.C. 3101 et seq.

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

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

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

(c) How much will it cost to administer this program for the first full year? Drafting the interlocal and partnership agreements and implementing will be a minimal expense to be covered by federal WIA funds allocated for WIOA transition activities.

(d) How much will it cost to administer this program for subsequent years? The costs will be negligible to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3122 and 3121, and Training and Employment Guidance Letter (TEGL) WIOA No. 27-14, TEGL 27-14, Change 1

2. State compliance standards. KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperated with other state and federal agencies for the proper administration of

the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. The composition and functions of each local workforce development board and the activities of chief elected officials must be consistent with the minimum criteria set forth in 29 U.S.C. 3122. 29 U.S.C. 3121 and TEGL 27-14 mandate the policy for the designation of local workforce development areas by the Governor, in consultation with the State Board or its successor, by July 1, 2015.

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 additional requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements provide further guidance and clarification necessary for effective local implementation activities.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, June 9, 2015)

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS[Chapter] 13B, 164.020, 164.030, 164A.330(6), 38 U.S.C. 3301-3325

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state postsecondary education institution and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, such as [including] serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program that could result in the award of a:

(a) Certificate, diploma, or other program award at an institution;

(b) Baccalaureate degree or lower, including enrollment in a course by a nondegree-seeking postbaccalaureate student;

(c) Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry, or "Pharm. D"; or

(d) Professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria for independence established in Section 5 of this administrative regulation.

(5) "Determination of residency status" means the decision of a postsecondary education institution ~~[that may include a formal hearing]~~ that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(6) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(7) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(8) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who meets the criteria for independence established in Section 5 of this administrative regulation.

(9) "Institution" means an entity defined by KRS 164.001(12) if the type of institution is not expressly stated and includes the Kentucky Virtual University, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance

Authority.

(10) "Kentucky resident" means a person determined by an institution for tuition ~~purposes~~[purpose] to be domiciled in, and a resident of, Kentucky as determined by this administrative regulation.

(11) "Nonresident" means a person who:

(a) Is domiciled outside[by] Kentucky;

(b) Currently maintains legal residence outside Kentucky; or

(c) Is not a Kentucky resident as determined by this administrative regulation.

(12) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. There was a relinquishment of the rights of the parents; and

3. The guardianship was not established primarily to confer Kentucky residency on the person.

(13) "Preponderance of the evidence" means the greater weight of evidence or evidence that is more credible and convincing to the mind.

(14) "Residence" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(15) "Student financial aid" means all forms of payments to a student if one (1) condition of receiving the payment is the enrollment of the student at an institution, and includes student employment by the institution or a graduate assistantship.

(16) "Sustenance" means:

(a) Living expenses, such as room, board, maintenance, and transportation; and

(b) Educational expenses, such as tuition, fees, books, and supplies [living expenses including room, board, maintenance, transportation, and educational expenses including tuition, fees, books, and supplies].

Section 2. Scope. (1) State-supported postsecondary education institutions were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost to a qualified individual who is domiciled in Kentucky and who is a resident of Kentucky.

(2) In accordance with the duties established in KRS 164.020, the Council on Postsecondary Education may require a student who is neither domiciled in, nor a resident of, Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) Unless otherwise indicated, this administrative regulation shall apply to all student residency determinations, regardless of circumstances, including residency determinations made by:

(a) The state-supported institutions for prospective and currently-enrolled students;

(b) The Southern Regional Education Board for contract spaces;

(c) Reciprocity agreements, if appropriate;

(d) The Kentucky Virtual University;

(e) Academic common market programs;

(f) The Kentucky Educational Excellence Scholarship Program; and

(g) Other state student financial aid programs, as appropriate.

Section 3. Determination of Residency Status; General Rules.

- (1) A determination of residency shall include:
- (a) An initial determination of residency status by an institution;
 - 1. During the admission process;
 - 2. ~~for~~ Upon enrollment in an institution for a specific academic term; or
 - 3. For admission into a specific academic program;
 - (b) A reconsideration of a determination of residency status by an institution based upon a changed circumstance; or
 - (c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.
- (2) An initial determination of residency status shall be based upon:
- (a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;
 - (b) Information derived from admissions materials;
 - (c) If applicable, other materials required by an institution and consistent with this administrative regulation; and
 - (d) Other information available to the institution from any source.
- (3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.
- (4) A determination of residency status shall be based upon verifiable circumstances or actions.
- (5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.
- (6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an institution.
- (7) A student may apply for a review of a determination of residency status once for each academic term.
- (8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.
- (9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.
- (10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty or sanction may also include:
- (a) Student discipline by the institution through a policy written and disseminated to students; or
 - (b) Criminal prosecution.

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:

- (a) A person is, or seeks to be, an undergraduate student and admissions records show the student to be a graduate of an out-of-state high school within five (5) years prior to a request for a determination of residency status;
- (b) A person's admissions records indicate the student's residence to be outside of Kentucky when the student applied[at the time of application] for admission;
- (c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;
- (d) A person moves to Kentucky and within twelve (12) months enrolls at an institution more than half time;
- (e) A person has a continuous absence of one (1) year from Kentucky; or
- (f) A person attended an out-of-state higher education institution during the past academic year and paid in-state tuition at that institution.

(2) A presumption arising from subsection (1) of this section shall only be overcome by preponderance of evidence sufficient to demonstrate that a person is domiciled in and is a resident of Kentucky.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision shall be/is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent, and therefore, lacks the ability to form the requisite intent to establish domicile. A determination that a student is independent shall be one (1) step in the overall determination of whether a student is or is not a resident of Kentucky.

(2) In determining the dependent or independent status of a person, the following information shall be considered, as well as other relevant information available when[at the time] the determination is made:

(a) 1. Whether the person has been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. Whether the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) Whether the person has financial earnings and resources independent of a person other than an independent spouse necessary to provide for the person's own sustenance.

(3) An individual who enrolls at an institution immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

(4) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(5) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

(6) Financial assistance from, or a loan made by, a parent or family member other than an independent spouse, if used for sustenance of the student:

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person; and

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky, regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to federal or Kentucky income tax provisions.

(2) If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky, but subsequently move from the state:

(a) The dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled; and

(b) The dependent person's residency status shall be reassessed if continuous enrollment is broken or the current degree level is completed.

Section 7. Member or Former Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky when inducted[at the time of induction] into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the member's time of active service; or

(b) If the member returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member of the armed services on active duty for more than thirty (30) days and who has a permanent duty station in Kentucky shall be classified as a Kentucky resident and shall be entitled to in-state tuition, as shall the spouse or a dependent child of the member.

(b) A member, spouse, or dependent of a member shall not lose Kentucky residency status if the member is transferred on military orders while the member, spouse, or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3)~~[(a)]~~ Membership in the National Guard or civilian employment at a military base alone shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section. If a member of the Kentucky National Guard is on active duty status for a period of not less than thirty (30) days, the member shall be considered a Kentucky resident, as shall the spouse ~~or~~~~off~~ a dependent child of the member.

(4) A person eligible for benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. 3301-3325, or any other educational benefits provided under Chapter 38 of the United States Code[38 U.S.C. 3301 et seq.] or any other federal law authorizing educational benefits for veterans] shall be entitled to Kentucky resident status for purposes of tuition charged at state-supported institutions.

(5) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H-1, H-4 if accompanying a person with an H-1 visa, I, K, L, N, R, shall establish domicile and residency the same as another person.

(3)(a) An independent person holding a nonimmigrant visa with designation B, C, D, F, H-2, H-3, H-4 if accompanying a person with an H-2 or H-3 visa, J, M, O, P, Q, S, TD, or TN shall not be classified as a Kentucky resident~~f, j~~ because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile as defined in Section 1(6) of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

(4) A person shall be a Kentucky resident for the purpose of this administrative regulation if the person graduated from a Kentucky high school and:

(a) Is an undocumented alien;

(b) Holds a visa listed in subsections (2) or (3)(a) of this section; or

(c) Is a dependent of a person who holds a visa listed in subsections (2) or (3)(a) of this section.

(5)(a) Except as provided in paragraph (b) of this subsection, a person who has petitioned the federal government to reclassify visa status shall continue to be ineligible until the petition has been granted~~decided~~ by the federal government.

(b) A person who has petitioned the federal government to reclassify his or her visa status based on marriage to a Kentucky resident and who can demonstrate that the petition has been filed and acknowledged by the federal government, may establish Kentucky domicile and residency at that time.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(6).

Section 10. Criteria Used in a Determination of Residency Status. (1)(a) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions.

(b) A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency.

(c) A person shall not be determined to be a Kentucky resident by the performance of an act that is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience.

(d) Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

(e) A student or prospective student shall respond to all requests for information regarding domicile or residency requested by an institution.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start of the academic term for which a classification of Kentucky residency is sought;

(c)1. Filing a Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with application to or attendance at an institution following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Marriage of an independent student to a person who was domiciled in and a resident of Kentucky prior to the marriage; and

(k) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) Kentucky driver's license;

(c) Registration as a Kentucky voter;

(d) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing; and

(e) Continued presence in Kentucky during academic breaks.

(4) The absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency

status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by the institution.

(2) Upon transfer to a Kentucky institution, a student's residency status shall be assessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Student Responsibilities. (1) A student shall report under the proper residency classification, which includes the following actions:

(a) Raising a question concerning residency classification;

(b) Making application for change of residency classification with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's residency status.

(3)(a) If a student fails to provide, by the date specified by the institution, information required by an institution in a determination of residency status, the student shall be notified by the institution that the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4)(a) The formal hearing conducted by an institution and the final recommended order shall be a final administrative action with no appeal to the Council on Postsecondary Education.

(b) A formal administrative hearing conducted by the Council on Postsecondary Education for residency determinations related to eligibility for the Academic Common Market and Regional Contract Programs shall be conducted pursuant to the provisions of KRS Chapter 13B and 13 KAR 2:070. The recommended order issued by the President of the Council shall be a final administrative action.

(5) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is because a student has failed to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 13. Institutional Responsibilities. Each institution shall:

(1) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer's determination;

(2) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal;

(3) Establish a formal hearing process as described in Section 14 of this administrative regulation; and

(4) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:

(a) Approved by the institution's governing board;

(b) Made available to all students; and

(c) Filed with the council.

Section 14. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.

(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The

hearing officer shall:

(a) Be a person not involved in determinations of residency at an institution except for formal hearings; and

(b) Not be an employee in the same organizational unit as the residency appeals officer.

(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:

(a) A hearing officer to make a recommendation on a residency appeal;

(b) Guarantees of due process to a student that include:

1. The right of a student to be represented by legal counsel;

and

2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency; and

(c) A recommendation to be issued by the hearing officer.

(4) An institution's formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 15. Cost of Formal Hearings. (1) An institution shall pay the cost for all residency determinations including the cost of a formal hearing.

(2) A student shall pay for the cost of all legal representation in support of the student's claim of residency.

GLENN DENTON, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: March 2, 2015

FILED WITH LRC: March 2, 2015 at 3 p.m.

CONTACT PERSON: Travis Powell, General Counsel and Assistant Vice President of Operations, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone (502) 573-1555, ext. 142, fax (502) 573-1535, email travis.powell@ky.gov.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(As Amended at ARRS, June 9, 2015)

103 KAR 3:010. General Administrative Forms Manual.

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081, 131.110, 131.130, 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.240, 131.340, 131.500, 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180, 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.420, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5),(6), 141.050(4), 141.210, 141.235, 141.340(2), 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.1-310(1), 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by

reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100(P), "Kentucky Tax Registration Application and Instructions", shall:

(a) Be used by taxpayers to voluntarily apply for tax registration of the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(6) Revenue Form 10A100-CS(P), "Kentucky Tax Registration Application and Instructions", shall:

(a) Be sent by the department's Division of Registration and Data Integrity to non-compliant taxpayers for the taxpayers to apply for tax registration of the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(7) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", shall:

(a) Be used by the taxpayer to update business information or to cancel accounts for the following taxes:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;

8. Utility Gross Receipts License tax;

9. Telecommunications tax; or

10. Coal severance and processing tax; and

(b) Provide the department the necessary information to properly update and maintain demographic information of the business for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(8) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", shall provide instructions for the proper completion of Revenue Form 10A104.

(9) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", shall be used to establish a taxpayer administrator and authorized users for use of the Kentucky Online Tax System.

(10) Revenue Form 10A2000, "Request for Return/Information", shall be used to request information from the disclosure office as an inter-agency request or as a request from an outside agency.

(11) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer Program.

(12) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(13) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133, and 134.

(14) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(15) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

(16) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(17) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, published in the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(18) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(19) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(20) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(21) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(22) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(23) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the

Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(24) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(25) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(26) Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property may be sold.

(27) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(28) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(29) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability may be collected.

(30) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(31) Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(32) Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(33) Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(34) Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(35) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(36) Revenue Form 12A517, "Notice of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(37) Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(38) Revenue Form 12A517-2, "Notice of [Tax] Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39) Revenue Form 12A517-3, "Notice of [Enterprise] Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and

giving notification to the taxpayer.

(40) Revenue Form 12A517-4, "Notice of [Property Tax] Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(41) Revenue Form 12A518, "Certificate of Release of Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(42)~~[(39)]~~ Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(43) Revenue Form 12A518-2, "Certificate of [Tax Lien] Release of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(44) Revenue Form 12A518-3, "Certificate of [Enterprise Lien] Release of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(45) Revenue Form 12A518-4, "Certificate of [Property Tax Lien] Release of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(46)~~[(40)]~~ Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(47)~~[(44)]~~ Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(48)~~[(42)]~~ Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(49)~~[(43)]~~ Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(50)~~[(44)]~~ Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(51)~~[(45)]~~ Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(52)~~[(46)]~~ Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(53)~~[(47)]~~ Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(54)~~[(48)]~~ Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(55)~~[(49)]~~ Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a non-permit basis, as required by 103 KAR 25:060.

(56)~~[(50)]~~ Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(57)~~[(54)]~~ Revenue Form 30A872, "Record of Money Receipt

Issued", shall be used by Department of Revenue Field personnel to provide written documentation of acceptance of cash payments.

(58) [(52)] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his or her vendors concerning the issuance of exemption certificates.

(59) [(53)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the auditor to acknowledge payment from taxpayers of taxes found to be tentatively due when there is an audit.

(60) [(54)] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(61) [(55)] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(62) [(56)] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Central Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(63) [(57)] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(64) [(58)] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(65) [(59)] Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(66) [(60)] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(67) [(61)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(68) [(62)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(69) [(63)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(70) [(64)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(71) [(65)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(72) [(66)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(73) [(67)] Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(74) [(68)] Revenue Form 31A110, "Office of Field Operations Estimated/[Jeopardy] Assessment Request", shall be used for Taxpayer Service Centers to request approval to submit estimated/[jeopardy] assessments.

(75) [(69)] Revenue Form 31A114, "Property Audit Request", shall be used by PVAs to submit audit requests for property tax.

(76) [(70)] Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting an audit.

(77) [(74)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(78) [(72)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(79) [(73)] Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders", shall be used to document an agreement fixing a period of audit for sales or use tax field audits for EDP holders.

(80) [(74)] Revenue Form 31A200, "Reporting Agreement", shall be used to document an agreement between the Department of Revenue and taxpayer regarding sales tax.

(81) [(75)] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

~~(82) [(76)] Revenue Form 31A800, "IIT Review History Document", shall be used to record interaction with the taxpayer during an individual income tax review conducted by compliance officers.~~

(77) Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(83) Revenue Form 31A800, "IIT Review History Document", shall be used to record interaction with the taxpayer during an individual income tax review conducted by compliance officers.

(84) [(78)] Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(85) [(79)] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", shall be the brochure used as instructions for taxpayers who submit tax records in an electronic format.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June 2009;

(e) Revenue Form 10A100(P), "Kentucky Tax Registration Application and Instructions", April 2015 [July 2013];

(f) Revenue Form 10A100-CS(P), "Kentucky Tax Registration Application and Instructions", April 2015 [July 2013];

(g) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", April 1, 2015 [June 2011];

(h) Revenue Form 10A104-I, "Instructions Update or

Cancellation of Kentucky Tax Account(s)", April, 2015[June 2014];

(i) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", May 2010;

(j) Revenue Form 10A2000, "Request for Return/Information", October 2011;

(k) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", April 2006;

(l) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(m) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", July 2014[2013];

(n) Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(o) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", August 2012;

(p) Revenue Form 12A104, "Notice of Seizure", October 1982;

(q) Revenue Form 12A107, "Notice of Sale", January 2000;

(r) Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(s) Revenue Form 12A109-2, "Release of Levy", January 2000;

(t) Revenue Form 12A109-3, "Release of Levy", January 2008;

(u) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(v) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(w) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(x) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(y) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(z) Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(aa) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(bb) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(cc) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

(dd) Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(ee) Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(ff) Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(gg) Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

(hh) Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

(ii) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(jj) Revenue Form 12A517, "Notice of Lien", November 2011;

(kk) Revenue Form 12A517-1, "Notice of Child Support Lien", August 2014[November 2008];

(ll) Revenue Form 12A517-2, "Notice of [Tax] Lien", August 2014;

(mm) Revenue Form 12A517-3, "Notice of [Enterprise] Lien", December 2014;

(nn) Revenue Form 12A517-4, "Notice of [Property Tax] Lien", December 2014;

(oo) Revenue Form 12A518, "Certificate of Release of Lien", November 2008;

(pp)[(mm)] Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", August 2014[January 2008];

(qq) Revenue Form 12A518-2, "Certificate of [Tax Lien] Release of Lien", August 2014;

(rr) Revenue Form 12A518-3, "Certificate of [Enterprise Lien] Release of Lien", December 2014;

(ss) Revenue Form 12A518-4, "Certificate of [Property Tax

Lien] Release of Lien", December 2014;

(tt)[(nn)] Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;

(uu)[(oo)] Revenue Form 12A638(l), "Instructions for Completing Statement of Financial Condition for Individuals", August 2004;

(vv)[(pp)] Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

(ww)[(qq)] Revenue Form 12A639(l), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

(xx)[(rr)] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

(yy)[(ss)] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", September 2011;

(zz)[(tt)] Revenue Form 12B020, "Notice of Levy", September 2004;

(aaa)[(uu)] Revenue Form 12B020-2, "Notice of Levy", January 2008;

(bbb)[(vv)] Revenue Form 21A020, "Request for Copy of Tax Refund Check", November 2011;

(ccc)[(ww)] Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;

(ddd)[(xx)] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;

(eee)[(yy)] Revenue Form 30A872, "Record of Money Receipt Issued", October 2000;

(fff)[(zz)] Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

(ggg)[(aaa)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

(hhh)[(bbb)] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", December 2011;

(iii)[(eee)] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", December 2011;

(jjj)[(ddd)] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", December 2011;

(kkk)[(eee)] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", December 2011;

(lll)[(fff)] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", December 2011;

(mmm)[(ggg)] Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", December 2011;

(nnn)[(hhh)] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", December 2011;

(ooo)[(iii)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", December 2011;

(ppp)[(jjj)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", December 2011;

(qqq)[(kkk)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", December 2011;

(rrr)[(lll)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

(sss)[(mmm)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

(ttt)[(nnn)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

(uuu)[(ooo)] Revenue Form 31A050, "Electronic Transmittal Authorization", March 2011;

(vvv)[(ppp)] Revenue Form 31A110, "Office of Field Operations Estimated [Jeopardy] Assessment Request", June 2014[2012];

(www)[(qqq)] Revenue Form 31A114, "Property Audit Request", November 2011;

(xxx)[(rrr)] Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

(yyy)[(sss)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

(zzz)[(ttt)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

(aaaa)[(uuu)] Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for

Authorized EDP Holders", June 2013;

(bbb)(www) Revenue Form 31A200, "Reporting Agreement", November 2011;

(ccc)(www) Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

(ddd) Revenue Form 31A725, "Statute of Limitations Agreement", July 2014/2006;

(eee)(xxx) Revenue Form 31A800, "IIT Review History Document", November 2011;

(fff)(yyy) Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;

(zzz) Revenue Form 31F006, "Southeastern States Information Exchange Program", March 2012; and

(ggg)(aaaa) Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", May 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 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9826, fax (502) 564-2541.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (As Amended at ARRS, June 9, 2015)

202 KAR 7:701. Scope of practice matters.

RELATES TO: KRS 39A.050, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope[those scopes] of practice.

Section 1. Emergency Medical[First] Responder. (1) In addition to the skills and procedures established[outlined] in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[1995 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician—First Responders], emergency medical[first] responders certified by the board shall be eligible to perform the [following] supplemental procedures:

(a) Cervical spine and spinal immobilization; and

(b) Administration of Naloxone via Nasal Atomization Devices[Utilization of oxygen;

(b) Obtaining blood pressures;

(c) Utilization of an automatic external defibrillator; and

(d) Cervical spine and spinal immobilization].

(2) To be eligible to perform a supplemental procedure established in subsection (1) of this section[the supplemental procedures], an emergency medical[a-first] responder shall have been trained and educated utilizing:

(a) [The]Kentucky Required Mandatory Supplemental Curriculum: EMR [for the Emergency Medical Responder – Spinal Immobilization (KBEMS-E-34); and

(b) [The]Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone using a Nasal Atomization Device[Emergency Medical Responder – Naloxone Administration via Nasal Atomization Devices] (KBEMS-E-33)[the "Kentucky Required Mandatory Supplemental

Curricula for the First Responder"]

(3) An out-of-state emergency medical[first] responder may perform any skill or procedure that the emergency medical[first] responder may use in the state in which the emergency medical[first] responder is certified subject to the emergency medical[first] responder being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4)(a) An emergency medical responder shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7[approved by KBEMS and the medical director of the agency that employs the emergency medical responder]. Deviation from these protocols shall only occur if:

1.[(a)] The emergency medical responder's medical director or designated on-line medical direction orders otherwise;

2.[(b)] Compliance with approved protocols is not in the patient's medical best interest; or

3.[(c)] The emergency medical responder does not have the equipment or medication to adhere to the protocol.

[(b)](5)] Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures established[outlined] in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[1994 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician—Basic], an EMT[EMTs] certified by the board shall be eligible to perform the [following] supplemental procedures:

(a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic, including the use of end tidal CO₂ monitoring (EtCO₂);

(b) Securing of[Secure] an endotracheal tube that has been inserted by appropriately licensed personnel;

(c) The use of Blind Insertion Airway Devices (BIADs);

(d) Utilizing[Set up and troubleshoot potential problems with] a cardiac monitor and troubleshooting potential problems;

(e)[(d)] Selecting and applying[Select and apply] cardiac electrodes;

(f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);

(g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;

(h) Care for a saline lock site where a catheter has been dislodged;

(i) Administration of Epinephrine for anaphylaxis;

(j) Administration of Naloxone using a Nasal Atomization Device; and

(k) Administration of Albuterol using a Nebulizer[(e) Apply a pulse oximeter and obtain pulse oximetry readings;

(f) Troubleshoot potential problems with a pulse oximeter;

(g) Obtain an appropriate sample for and obtain a blood glucose reading;

(h) Troubleshoot potential problems with a glucose-monitoring device;

(i) Shut off the flow of a preestablished intravenous infusion; and

(j) Care for an intravenous infusion site where a catheter has been dislodged or removed].

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

(a) [The]Kentucky Required Mandatory Supplemental Curriculum for the EMT in[Emergency Medical Technician (EMT)] Advanced Airway Management[Assist Skills]: Monitoring &[and] Securing an ETT[Endotracheal Tube] (KBEMS-E-38);

(b) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive [cardiac]Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and[&] Transmission of a 12-Lead ECG (KBEMS-E-35);

(c) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters- Care for a saline lock site where a catheter has become dislodged] (KBEMS-E-40);

(d) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive [EtCO₂] Monitoring Device – Application of End-tidal Carbon Dioxide Monitoring[Use of EtCO₂ devices to identify correct placement of an endotracheal tube] (KBEMS-E-39);

(e) Kentucky Required Mandatory Supplemental Curriculum for the EMT in the[Emergency Medical Technician-] Administration of Naloxone Using a Nasal Atomization Device (KBEMS-E-36);

(f) Kentucky Required Mandatory Supplemental Curriculum for the EMT in[Emergency Medical Technician-] Advanced Airway Management: Blindly Inserted Airway Devices [BIADs](BIAD's) (KBEMS-E-37);

(g) Kentucky Required Mandatory Supplemental Curriculum for the EMT[Emergency Medical Technician]: Sampling of Blood Glucose Using a Glucometer (KBEMS-E-41);

(h) Kentucky Required Mandatory Supplemental Curriculum [for the Emergency Medical Technician]: Administration of Epinephrine (KBEMS-E-42); and

(i) Kentucky Required Mandatory Supplemental Curriculum [for the Emergency Medical Technician]: Administration of Albuterol using a Nebulizer (KBEMS-E-43). Initial Training in Advanced Airway Management;

(b) "Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device – Application of Electrocardiogram Electrodes and Monitor;";

(c) "Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device – Application of Pulse Oximetry;";

(d) "Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) in Blood Glucose Analysis;";

(e) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in the Monitoring, Maintaining, and Discontinuing of Preestablished Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters;"; and

(f) "Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device – Application of End Tidal Carbon Dioxide Monitoring;";

(3) An EMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7[approved by KBEMS and the medical director of the agency that employs the EMT]. Deviation from these protocols shall only occur[issued by the employer except] if:

(a) The medical director or designated on-line medical direction[control physician] orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540. [The documentation shall be maintained as a part of the ambulance run form and as required by 202 KAR 7:501, Section 5(4)(c).]

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT[Paramedic] Students[and Paramedic Graduates]. (1) During the didactic, laboratory, and clinical portions of an EMT[a paramedic] course, an EMT[a paramedic] student

may perform any skill or procedure, or administer any medication within the scope of practice for an EMT[a paramedic] as established[defined] by this administrative regulation[KRS 311A.470], if the student:

(a)[The student] Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT[paramedic] course.

(2) During a[the] field internship, an EMT[a paramedic] student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT[a paramedic] as established[defined] by this administrative regulation[KRS 311A.470], if:

(a) The student has written authorization[permission] by the medical director of the EMT[paramedic] course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure[The permission] is filed with the[paramedic-course] coordinator of the EMT[paramedic] course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed[ambulance service] each give written permission to the EMT[paramedic] student[or paramedic graduate] to participate in a field internship with the agency[their service].

(3) This administrative regulation shall not be construed to allow an emergency medical[a first] responder student, EMT student, AEMT student, or paramedic student[, or paramedic graduate] to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT). (1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the [following] supplemental procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and

(c) Establishing and maintaining[Establish and maintain] an adult intraosseous infusion.

(3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) [The] Kentucky Required Mandatory Supplemental Curriculum for the AEMT[Advanced Emergency Medical Technician] Using a Noninvasive Monitoring Device – Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring (KBEMS-E30);

(b) [The] Kentucky Required Mandatory Supplemental Curriculum for the AEMT[Advanced Emergency Medical Technician] – [Establish and maintain an adult] Intraosseous Infusion in the Adult (KBEMS-E-31); and

(c) [The] Kentucky Required Mandatory Supplemental Curriculum for the AEMT[Advanced Emergency Medical Technician] Using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices (KBEMS-E-32).

(4)(a) An AEMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7[approved by KBEMS and the medical director of the agency that employs the AEMT]. Deviation from these protocols shall only occur if:

1.[(a)] The AEMT's medical director or designated on-line medical direction orders otherwise;

2.[(b)] Compliance with approved protocols is not in the patient's medical best interest; or

3.[(c)] The AEMT does not have the equipment or medication to adhere to the protocol.

(b) [(5)] Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

~~(5)/(6)~~ If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as established[defined] by this administrative regulation, if:

(a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and

(c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student, EMT student, AEMT student, or paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) A paramedic[Paramedics] may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[outlined in the 1998 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician—Paramedic].

(2) A paramedic shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7[approved by KBEMS and the medical director of the agency that employs the EMT]. Deviation from these protocols shall only occur[issued by the employer and approved by the board except] if:

(a) The medical director or designated on-line medical direction[control-physician] orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540. [The documentation shall be maintained as a part of the ambulance run form and as required by 202 KAR 7:501, Section 5(4)(c).]

(4)(a) A paramedic functioning in a[their] position of employment may perform any procedure or administer medications authorized by KRS 311A.170[f] or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established[set forth] by the paramedic's medical director and the paramedic's employer.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced practice registered nurse (APRN)[registered nurse practitioner], licensed physician's assistant, or physician.

(5)(a)1. An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170[f] or this

administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established[set forth] by the paramedic's medical director and, if appropriate, the paramedic's employer; or

2. The paramedic may render care subject to the limitations of the paramedic's[their] scope of practice at any location, if ordered to do so by a duly licensed physician.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced practice registered nurse (APRN)[registered nurse practitioner], licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to the:

(a) control of the out-of-state paramedic's medical director or protocols and only in the following circumstances; and

(b) The following conditions and limitations:

(a)[1.] An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;

(b)[2.] An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or

(c)[3.] An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in the paramedic's[their] education and training subject to authorization by the medical director through established protocols in accordance with KRS Chapter 311A and 202 KAR Chapter 7[approved by the board].

Section 7.[5.] Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as established[defined] in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of employment[their being employed] by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical competencies at a level satisfactory to the employing hospital and subject to KRS Chapter 311A and 202 KAR Chapter 7[applicable laws and administrative regulations].

(3) An employer shall not require[The employers shall not dictate] practice for a paramedic that exceeds the defined scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

(a) A lack of knowledge of or training or education in the procedure or skill; or

(b) The order or directive exceeding the paramedic's scope of practice.

(4) An employer[Employers] may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures exceeding the scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7[that exceed their statutorily defined scope of practice] while in the hospital's employ.

(5) A paramedic[Paramedics] shall [have a duty to]:

(a) Maintain strict patient confidentiality;

(b) Provide and assure continuity of care to [their] patients;

(c) Be a patient advocate[advocates];

(d) Follow the hospital's chain of command;

(e) Be knowledgeable and function within the scope of practice

of a paramedic;

(f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;

(g) ~~[Appropriately]~~ Document on patient care records all interventions, treatments, and assessments performed by the paramedic;

(h) Perform patient assessment, which may include triage; and

(i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established[defined] by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure or administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established[defined] by this administrative regulation, if:

(a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;

(b) The permission is filed with the paramedic course coordinator of the paramedic course; and

(c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with the ambulance[their] service.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student, EMT student, AEMT student, or paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9.[6-] Restriction of Practice. This administrative regulation shall not prohibit a[the] medical director from restricting the scope of practice of any emergency medical[first] responder, EMT, AEMT, or paramedic under the medical director's[their] authority through established protocols.

Section 10.[7-] Exemptions. This administrative regulation shall not prohibit an emergency medical[a-first] responder, emergency medical technician, advanced emergency medical technician[EMT], or paramedic certified or licensed in another state or registered with the NREMT from functioning in accordance with the scope of practice established in KRS Chapter 311A and 202 KAR Chapter 7[under their statutory or regulatory scope of practice] while assisting with mass casualties, weapons of mass destruction, or disaster incidents.

Section 11. Incorporation[8- Incorporated] by Reference. (1) The following documents are incorporated by reference.

(a) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device – Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring", KBEMS-E-30, February 2007[KBEMS-E30];

(b) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT [~~Establish and maintain an~~] Intraosseous Infusion in the Adult", KBEMS-E-31, February 2007;

(c) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS-E-32, February 2007[E-32];

(d) "Kentucky Required Mandatory Supplemental Curriculum for the EMR in the[Emergency Medical Responder-] Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-33, February 2007;

(e) "Kentucky Required Mandatory Supplemental Curriculum:

EMR[for the Emergency Medical Responder (EMR)-] Spinal Immobilization", KBEMS-E-34, February 2007;

(f) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and[&] Acquisition and Transmission of a 12-Lead ECG", KBEMS-E-35, February 2007;

(g) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in the[Emergency Medical Technician-] Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-36, February 2007;

(h) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in[Emergency Medical Technician (EMT)] Advanced Airway Management: Blindly Inserted Airway Devices (BIADs)[(BIAD's)]", KBEMS-E-37, February 2007;

(i) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in[Emergency Medical Technician (EMT)] Advanced Airway Management~~[Assist Skills]~~: Monitoring &[and] Securing an ETT[Endotracheal Tube (ETT)]", KBEMS-E-38, February 2007;

(j) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-Tidal Carbon Dioxide Monitoring~~[, use of EtCO2 Devices to Identify Correct Placement of an Endotracheal Tube or BIAD]~~", KBEMS-E-39, February 2007;

(k) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters[Care for a Saline Lock site where a catheter has become dislodged]", KBEMS-E-40, February 2007;

(l) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer", KBEMS-E-41, February 2007;

(m) "Kentucky Required Mandatory Supplemental Curriculum~~for the EMT~~: Administration of Epinephrine", KBEMS-E-42, February 2007[and]

(n) "Kentucky Required Mandatory Supplemental Curriculum~~for the Emergency Medical Technician~~: Administration of Albuterol Using a Nebulizer", KBEMS-E-43, February 2007; and

(o) "National Highway Traffic Safety Administration National EMS Scope of Practice Model", February 2007[Curricula for the First Responder (April 2002)];

(b) Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in Advanced Airway Management (04-01);

(c) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device – Application of Electrocardiogram Electrodes and Monitor (04-01);

(d) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device – Application of Pulse Oximetry (04-01);

(e) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) in Blood Glucose Analysis (04-01);

(f) Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in the Monitoring, Maintaining, and Discontinuing of Preestablished Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-home Encounters (04-01); and

(g) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device – Application of End Tidal Carbon Dioxide Monitoring (04-01)].

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40565[2545 Lawrenceburg Road, Frankfort, Kentucky 40621], Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

CONTACT PERSON: Anne-Tyler Morgan; Legal Counsel,
Kentucky Board of Emergency Medical Services; McBrayer,
McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite
900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859)
281-6480.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, June 9, 2015)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Department of
Corrections Policies and Procedures," June 9/January 15,
2015[June 10, 2014], are incorporated by reference. Department of
Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons
(Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 10/12/12)
- 2.12 Abandoned Inmate Funds (Amended 3/14/14)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended
12/10/13)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff
(Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended
12/10/13)
- 3.14 Employee Time and Attendance Requirements
(Amended 6/9/15/1/15/15)[3/14/14])
- 3.17 Uniformed Employee Dress Code (Amended 8/20/13)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research and Survey Projects (Amended 12/10/13)
- 5.3 Program Evaluation and Measurement (Amended
6/9/15/1/15/15)[6/12/12])
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended
3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
(Amended 6/9/15/1/15/15)[12/17/12])
- 9.6 Contraband (Amended 3/14/14)
- 9.8 Search Policy (Amended 5/13/14)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.22 Control and Use of Caustic/Toxic Materials (Added
3/14/14)
- 10.2 Special Management Inmates (Amended
6/9/15/1/15/15)[8/20/13])
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance (Amended 3/14/14)
- 11.4 Alternative Dietary Patterns (Amended 3/14/14)
- 13.1 Pharmacy Policy and Formulary (Amended

- 1/15/15[3/14/14])
- 13.2 Health Maintenance Services (Amended
1/15/15[3/14/14])
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended
10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added
8/25/09)
- 13.13 Mental Health Services (Amended
6/9/15/1/15/15)[Added 8/20/13])
- 14.1 Investigation of Missing Inmate Property (Amended
10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 6/9/15/1/15/15
[3/14/14])
- 14.7 Sexual Abuse Prevention and Intervention Programs
(Amended 12/10/13)
- 15.1 Hair, Grooming and ID Card Standards (Amended
1/15/15[10/12/12])
- 15.2 Rule Violations and Penalties (Amended 3/14/14)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended
3/14/14)
- 15.7 Inmate Accounts (Amended 1/15/15[3/14/14])
- 15.8 Unauthorized Substance Abuse Testing (Amended
10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 1/15/15[8/20/13])
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 1/15/15[07/09/07])
- 17.1 Inmate Personal Property (Amended 6/9/15/1/15/15
[8/20/13])
- 17.2 Assessment Center Operations (Amended
6/9/15/1/15/15)[11/15/06])
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations
(Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended
1/15/15[07/09/07])
- 18.2 Central Office Classification Committee (Amended
8/20/13)
- 18.3 Confinement of Youthful Offenders (Added
6/9/15/1/15/15)
- 18.5 Custody and Security Guidelines (Amended 3/14/14)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-
PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But
Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 1/15/15[11/15/06])
- 18.16 Information to the Parole Board (Effective 3/14/14)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended
1/15/15[8/20/13])
- 20.1 Educational Programs and Educational Good Time
(Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)

- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 8/20/13)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Pre-release Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 07/09/07)
- 25.10 Administrative Release of Inmates (Amended 11/9/10)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 16, 2014

FILED WITH LRC: January 15, 2015 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
(As Amended at ARRS, June 9, 2015)**

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 131.110(1), 131.340, 186.020(1), (3), 186.040, 186.050(13)(a), 186.051(2), 186.180, 186.240(2), 49 U.S.C. 31704

STATUTORY AUTHORITY: KRS 186.050(13), 186.051(3), 49 U.S.C. 31704

NECESSITY, FUNCTION, AND CONFORMITY: 49 U.S.C. 31704 requires each state to participate in the International Registration Plan. KRS 186.051(3) requires the Transportation Cabinet to promulgate an administrative regulation establishing a system of staggered registration time periods for commercial motor vehicles. KRS 186.050(13)(a) requires the Transportation Cabinet to promulgate an administrative regulation concerning the registration of commercial motor vehicles pursuant to the Articles of the International Registration Plan. This administrative regulation establishes the procedures required to register a commercial motor vehicle under the provisions of the International Registration Plan; clarifies if a vehicle licensed pursuant to KRS 186.050(13) is required to be licensed as established in other sections of KRS 186.050; and establishes the recordkeeping standards required for apportionable vehicles, auditing of the records by the Transportation Cabinet, and the appeal procedure if a disagreement occurs.

Section 1. Definitions. (1) "Apportionable vehicle":

(a) Means a power conveyance that is used or intended for use in two (2) or more International Registration Plan Jurisdictions that is used for the transportation of persons for hire, or designed, used, or maintained primarily for the transportation of property and:

1. Has two (2) axles and gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);
2. Has three (3) or more axles, regardless of weight; or
3. Is used in combination for a vehicle with a gross weight in which the combination exceeds 26,000 pounds (11,793.401 kilograms); and

(b) Does not mean a recreational vehicle; a vehicle displaying restricted plates, ~~or a bus used for the transportation of chartered parties;~~ a government-owned vehicle, except a truck or truck-tractor or a power conveyance in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less. The vehicle types excluded by this paragraph are usually registered pursuant to a plan at the option of the

registrant.

(2) "Base jurisdiction" means the member jurisdiction selected in accordance with the International Registration Plan to which an applicant applies for apportioned registration, or the member jurisdiction that issues apportioned registration to a registrant under the plan.

(3) "Established place of business" means a physical structure located within the base jurisdiction:

- (a) Owned, leased, or rented by the fleet registrant;
- (b) Designated by a street number or road location;
- (c) Open during normal business hours;
- (d) In which is located:

1. A person conducting the fleet registrant's business; and

2. The operational records of the fleet necessary for audit.

(4) "Fleet" means one (1) or more apportionable vehicles designated by a registrant for distance reporting as established in the International Registration Plan.

(5) "International Registration Plan" or "IRP" means a registration reciprocity agreement among the states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

(6) "Jurisdiction" means a country, state, province, territory, possession, or federal district of a country.

(7) "Operational records" means source documents that evidence distance travelled by a fleet in a member jurisdiction such as fuel reports, trip sheets, and driver logs, including those that are generated through on-board recording devices and maintained electronically as required by the IRP Audit Assistance[Procedures] manual.

Section 2. Application for Apportioned Registration. (1) The operator of an apportionable vehicle operating in more than one (1) licensing jurisdiction shall apply for apportioned registration in the jurisdictions of operation that are members of the IRP unless a trip permit has been purchased for each trip into the jurisdiction.

(2) A vehicle, or combination of power unit and trailer having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant.

(3) If Kentucky is the base jurisdiction for an operator of an apportionable vehicle, the operator's established place of business shall apply for the apportioned registration in Kentucky.

Section 3. Apportioned Mileage Reporting and Recordkeeping.

(1)(a) The fleet miles required to be reported on Kentucky IRP Apportioned Registration Application Schedule B, TC 95-303B shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year.

(b) If the registration year begins on a date in July, August, or September, the reporting period shall be the previous twelve (12) month period.

(c) The following table is provided for illustration purposes:

First Month of Registration Year	Reporting Period
January, 1975	July 1, 1973 - June 30, 1974
February, 1975	July 1, 1973 - June 30, 1974
March, 1975	July 1, 1973 - June 30, 1974
April, 1975	July 1, 1973 - June 30, 1974
May, 1975	July 1, 1973 - June 30, 1974
June, 1975	July 1, 1973 - June 30, 1974
July, 1975	July 1, 1973 - June 30, 1974
August, 1975	July 1, 1973 - June 30, 1974
September, 1975	July 1, 1973 - June 30, 1974
October, 1975	July 1, 1974 - June 30, 1975
November, 1975	July 1, 1974 - June 30, 1975
December, 1975	July 1, 1974 - June 30, 1975

(d) The mileage shall be distributed by jurisdiction. Miles travelled in a jurisdiction by an apportioned power unit, whether or not a member of the International Registration Plan, and whether the vehicle is empty or loaded, shall be reported.

(e) The mileage reported for a motor vehicle power unit that was added to, or deleted from the apportioned fleet during the mileage reporting period shall be the miles generated while the motor vehicle power unit was part of the apportioned fleet.

(f) Mileage shall include the following:

1. Loaded and unloaded trips;
2. Intrastate and interstate trips; and
3. Miles operated under trip permits.

(2)(a) An apportioned registrant shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year.

(b) The information shall be retained in an individual vehicle mileage record.

(c) The individual vehicle mileage record shall contain the following information:

1. Registrant's name and fleet number;
2. Beginning and ending date of trip;
3. Trip origin and destination;
4. Route of travel for trip;
5. Beginning and ending odometer or hubometer reading of each trip;
6. Total trip miles and mileage;
7. Mileage by jurisdiction for each trip;
8. Vehicle unit number and vehicle identification number; and
9. Driver's name or signature.

Section 4. Proof of Insurance and Certificate of Apportioned Registration. (1) The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet, and a vehicle to be apportioned registered.

(2) The county clerk's fee shall be collected as established in KRS 186.040 and 186.050.

(3) A vehicle owned by a non-Kentucky registrant that is properly titled in a foreign jurisdiction and leased to a Kentucky based-motor carrier shall be registered in the name of the Kentucky based-motor carrier with copies of the foreign title, lease agreement, and the owner's commercial driver's license.

(4) The applicant shall submit proof of insurance to the county clerk with the application for the certificate of apportioned registration.

Section 5. Registration Fees. (1)(a) The applicant shall submit an application for apportioned registration to the Department of Vehicle Regulation.

(b) Original or renewal application shall be made by using:

1. Kentucky IRP Apportioned Registration Supplemental Application Schedule C, TC 95-303C; and
2. Kentucky IRP Apportioned Registration Application Schedule B, TC 95-303B.

(c) After the Department of Vehicle Regulation has approved an application, the department shall compute the apportioned registration fee due each jurisdiction under the International Registration Plan.

(d) The applicant shall return to the department, either in person or by mail or electronic payment, the bill and a certified check, cashier's check, personal check, business check, or money order made payable to the Kentucky State Treasurer.

(e) If the applicant is required to post a bond as established in 601 KAR 1:200, Section 6, or has had a personal or business check returned for insufficient funds to the Transportation Cabinet by the applicant's bank, the cabinet shall require the applicant to make payment by cash, certified check, money order, or cashier's check.

(2) The required tax and fee shall be accompanied by proof of payment of the federal heavy vehicle use tax.

(3)(a) The Department of Vehicle Regulation shall issue an IRP apportioned license plate and IRP cab card to the registrant for each IRP registered vehicle.

(b) The originally issued IRP license plate shall have a decal, indicating the expiration month and year.

(c) After the yearly renewal the registrant shall be issued a new decal designating the year of expiration and a new IRP cab card.

(d) The IRP cab card shall list the jurisdictions in which the registrant has apportioned his or her registration fees.

(e) The original IRP cab card shall be carried in the cab of the vehicle continuously.

Section 6. Supplemental Applications. (1) An applicant needing to add or delete a vehicle from a fleet shall file Kentucky IRP Apportioned Registration Supplemental Application, Schedule C, TC 95-303C with the department. This form shall be used to provide notice of a:

- (a) [A] Vehicle addition;
- (b) [A] Vehicle deletion;
- (c) [A] Vehicle transfer; or
- (d) [A] Gross weight increase.

(2)(a) A vehicle deletion notice shall be accompanied by the apportioned registration plate and the IRP cab card.

(b) At the end of the registration month, a registrant may apply for a refund of the fees that apply to the unexpired months of the registration year.

(3)(a) If a vehicle is added by a registrant at the same time another vehicle with the same weight within the fleet is deleted, the Kentucky registration tax shall be transferred from the deleted to the added vehicle.

(b) The Kentucky transfer fee of three (3) dollars shall be collected as established in KRS 186.180.

(c) The registrant shall be notified of the transfer fee owed to other jurisdictions.

(4) If the declared gross weight of the vehicle is increased, the increased fees shall be prorated from the date the increased weight is allowed.

~~Section 7. Adding Jurisdictions to IRP Registrations. (1) If the operation of a registrant is expanded to include an additional jurisdiction that participates in the IRP, the registrant shall amend the mileage schedule by filing IRP Apportioned Registration Application, Schedule B, TC 95-303B with the department to reflect an estimate of miles to be operated in the new jurisdiction.~~

~~(2) The mileage percentages for an added jurisdiction shall be computed by adding to the actual mileages previously reported.~~

~~(3) Percentages approved on the original application shall not be changed during the registration year.~~

~~(4)(a) If an additional jurisdiction is added during the registration year, each vehicle in the fleet shall be changed to reflect operation in the additional jurisdiction.~~

~~(b) If an IRP cab card is damaged, lost, or destroyed, the Department of Vehicle Regulation shall send a replacement card to the registrant.~~

~~(c) Upon receipt of the new cab cards, the registrant shall return the outdated IRP cab cards to the department.~~

~~Section 8.] Conversion to Apportioned Registration. (1) If a vehicle is an interstate charter bus[,] or is registered in Kentucky as a commercial or limited activity vehicle, and the registrant intends to convert to an apportioned registration, the registrant shall purchase an apportioned registration from the county clerk of residence.~~

~~(2) The current commercial vehicle, charter bus, or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration.~~

~~(3)(a) The applicant shall be given credit for the remainder of the value of current Kentucky registration.~~

~~(b) This credit shall be applied toward fees due to other IRP jurisdictions and collected by Kentucky on the apportioned registration.~~

~~(4) All fees due to other jurisdictions and a fee due to Kentucky shall be paid in accordance with Section 5 of this administrative regulation before the apportioned credentials are issued.~~

~~Section 8.[9.] Replacement of Credentials. (1) The owner of a vehicle registered pursuant to KRS 186.050(13) may obtain a duplicate of a lost IRP cab card from the Department of Vehicle Regulation. A duplicate shall be obtained by:~~

~~(a) Filing Affidavit for Replacement or Non-exchange, TC 96-167; and~~

~~(b) Paying a fee of three (3) dollars as established in KRS 186.180.~~

(2) A registration plate issued pursuant to KRS 186.050(13) that is lost shall be reported as lost or stolen to the area state police post or local law enforcement agency and the Department of Vehicle Regulation.

(3)(a) A new certificate of apportioned registration shall be issued by the department after review and acceptance of the completed forms. A new license plate reissued by the department shall bear a different number from that of the lost plate.

(b) The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.

(4) The department shall cancel the registration corresponding to the number of the lost plate.

(5) A person finding a lost registration plate shall return it to the Department of Vehicle Regulation or to a county clerk.

Section 9.[140:] Apportioned Registration of Leased Vehicles.

(1) If an owner or lessor is the registrant of a vehicle, the vehicle may be registered in the name of the owner or lessor.

(a) The allocation of registration fees shall be based on the operational records of the owner or lessor; and

(b) The apportioned license plate and the IRP cab card shall be the property of the lessor.

(2) If the lessee is the registrant of a vehicle, the vehicle may be registered by the lessee in both the owner's or lessor's name and that of the lessee.

(a) The allocation of registration fees shall be based on the operational records of the lessee; and

(b) Apportioned registration of a leased vehicle shall be accomplished in one (1) of the following ways:

(1) (a) If the owner or lessor is the registrant, the vehicle shall be registered in the name of the owner or lessor.

(b) The allocation of registration fees shall be based on the operational records of the owner or lessor.

(c) The apportioned license plate and IRP cab card shall be the property of the lessor.

(2) If the lessee is the registrant, the vehicle shall be registered by the lessee:

(a) In the lessee's name;

(b) In the lessor's name; or

(c) In both the owner or lessor's name and that of the lessee.

(3) The allocation of registration fees shall be based on the operational records of the lessee.

(4) The apportioned license plate and IRP cab card shall be the property of the lessee.

Section 10.[144:] Audit of Apportioned Registrants. (1) As required by the IRP, the cabinet's Division of Road Fund Audits shall perform an audit of fifteen (15) percent of the apportioned registrants based in Kentucky every five (5) years.

(2) An audit shall be performed in accordance with the IRP Audit **Assistance[Procedures]** manual.

(3) The Division of Road Fund Audits shall notify the apportioned registrant in writing of the date, time, and location of the audit. Thirty (30) days advance notice shall be given to the registrant.

(4) Failure of the registrant to make the records required by Section 3 of this administrative regulation available upon request shall **result in:**

(a) **[Result in]**A penalty assessment as established in the IRP Audit **Assistance[Procedures]** manual; or

(b) Cancellation of apportioned registration as established in the IRP.

(5)(a) An auditor shall conduct and document a pre-audit conference with the registrant **listing[outlining]:**

1. Operation;
2. Audit procedures;
3. Records to be examined;
4. Sample period; and
5. Sampling procedures.

(b) The motor carrier and auditor shall determine at the pre-audit conference who has responsibility for final acceptance of the findings and the persons to be involved in the close-out conference.

(6) An auditor shall conduct and document a close-out conference with the registrant outlining preliminary findings that shall include:

- (a) Applicable penalty and interest;
- (b) Recommendations;
- (c) Rights of appeal; and
- (d) To whom the audit report should be addressed.

(7)(a) The Transportation Cabinet shall furnish the registrant a letter of audit findings and recap schedules.

(b) If requested, the cabinet shall supply other work papers to the registrant.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a tax due statement.

(9) Within forty-five (45) days of the date of the tax due statement, the registrant shall:

(a) Pay the supplemental tax; or

(b) Protest in writing to the Transportation Cabinet, Division of Road Fund Audits.

Section 11.[142:] Protest or Appeal of Audit Results. (1)(a) A written protest may be filed by a taxpayer, or a person representing a taxpayer, and shall include a supporting statement, and documents that identify the specific adjustments requested, or the portion of the audit protested, and shall establish the reason for the protest as required by KRS 131.110(1).

(b) A protest shall be filed with the Transportation Cabinet, Division of Road Fund Audits within forty-five (45) days from the date of the tax due statement.

(2) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering, or protest conference with the Division of Road Fund Audits in writing by using regular mail, facsimile, or electronic mail.

(3) Within sixty (60) days from the date the taxpayer submits additional information, or within sixty (60) days of a protest conference, the Division of Road Fund Audits shall issue a final ruling to the taxpayer.

Section 12.[143:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky IRP Apportioned Registration Application, Schedule B", TC Form 95-303B, August 2014~~[November 2006]~~;

(b) "Kentucky IRP Apportioned Registration Supplemental Application, Schedule C", TC Form 95-303C, March 2015~~[June, 2008]~~;

(c) "Affidavit for Replacement or Non-Exchange", TC Form 96-167, October, 2014~~[April, 1992]~~;

(d) "International Registration Plan with Official Commentary", January 1, 2015~~[2013]~~; **and**

(e) "Kentucky IRP Apportioned Registration Policies and Procedures Manual", February 1, 2013~~[May, 2012]~~; **and**

(f) "IRP Audit Assistance", 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, as follows:

(a) For the items incorporated by reference in paragraphs (a), (b), (c), and (e)~~[-and-(f)]~~ of this subsection, at the Department of Vehicle Regulation, Division of Motor Carriers, 200 Mero Street, Third Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) For the item incorporated by reference in paragraph (d) of this subsection, at the Office of Audits, Division of Road Fund Audits, 200 Mero Street, Fourth Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY KUHL, Commissioner

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 14, 2015 at 11 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Service, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Kentucky Bicycle and Bikeways Commission
Office of the Secretary
(As Amended at ARRS, June 9, 2015)

601 KAR 14:020. Bicycle safety standards.

RELATES TO: KRS 189.010, 189.030(1), 189.450[Chapter 189]

STATUTORY AUTHORITY: KRS[174.125,] 189.287

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.287 requires the cabinet to promulgate administrative regulations to establish standards for bicycle safety and equipment. This administrative regulation establishes the equipment and safety requirements required in the operation of a bicycle[KRS Chapter 189 sets forth many bicycle safety standards that can be overridden by administrative regulations promulgated by the Transportation Cabinet. The Bicycle and Bikeways Commission authorized by KRS 174.125 has suggested that with the ever-growing use of bicycles in Kentucky additional or different standards are necessary for the safety of the traveling public. This administrative regulation sets forth the required bicycle safety standards].

Section 1. Definitions. (1) "Bicycle":

(a) Means a device with an attached seat propelled primarily[solely] by human power upon which a person rides astride or upon, regardless of the number and size of the wheels in contact with the ground; and

(b) Does not mean a[; 4.] wheelchair designed for a person with a disability[; or 2. Device designed solely for use as a play vehicle for a child].

(2) "Hazard" means a condition present on the roadway that constitutes a danger to a bicycle rider such as:

- (a) A fixed or moving object;
- (b) A parked or moving vehicle;
- (c) A pedestrian;
- (d) A surface irregularity; or
- (e) An animal.

(3) "Shared lane" means a single lane of traffic less than fourteen (14) feet in width not including the gutter pan.

Section 2.[Front] Lights and Reflectors. (1) A bicycle operated on a highway during the hours or atmospheric conditions described in KRS 189.030(1) shall display at least[be equipped with] one (1) front light on either the bicycle or the bicyclist that is visible for 500 feet and capable of revealing[which clearly reveals] substantial objects at least fifty (50) feet in front of the bicycle[ahead and which is visible for 500 feet].

(2)[Section 2-. Rear Lights or Reflectors.] A bicycle [if[, when] operated on a highway or highway shoulder[.] shall display on either the bicycle or the bicyclist[so that it is visible from the rear of the bicycle]:

(a)[(4)] One (1) red reflector or red light visible for at least 100 feet from the rear of the bicycle; and

(b) One (1) red light or a flashing red light visible from the rear of the bicycle for at least 500 feet[(2)] during the hours or atmospheric conditions described in KRS 189.030(1)[, one (1) red light or flashing red light visible for at least 500 feet].

Section 3. Horn or Bell. (1) A bicycle may be equipped with a bell, horn, or other device capable of making an abrupt sound, but shall not be equipped with a siren or whistle.

(2) A[Every] person operating a bicycle shall shout or sound the bell, horn, or other sound device as necessary to warn pedestrians or other bicycles of the approach of the bicycle[whenever necessary as a warning of the approach of the bicycle to pedestrians or other bicycles, but shall not sound the horn or sound device unnecessarily.

(3) A bicycle shall not be equipped with a siren or whistle].

Section 4. Brakes. A bicycle shall not be operated on a highway or highway shoulder without a brake or brakes adequate to control the movement of, or[and] to stop, the bicycle within

fifteen (15) feet at a speed of ten (10) miles per hour on a dry, level, clean pavement.

Section 5. Seat. (1)(a) A bicyclist [if[, when] operating on a highway or highway shoulder[.] shall ride[on or] upon[astride] a seat attached to the bicycle[a permanently attached bicycle seat].

(b) A bicyclist operating on a highway or highway shoulder may transport a person or persons upon[in] a seat or carrying device attached to the bicycle in a manner in which the seat or device is manufactured and designed to be used.

(2)[Section 6-. Passengers.] A bicycle[, when being] operated on a highway or highway shoulder[.] shall not carry more than the number of persons for which the bicycle is[was] designed or[is] safely equipped.

Section 6. Transporting a Package and Attaching to a Motor Vehicle. (1)[7-. Packages.] A bicyclist[, when] operating on a highway or highway shoulder[.] shall not carry a package, bundle, or article that prevents the operator from keeping[at least] one (1) hand on the handle bars.

(2)[Section 8-. Prohibition Against Attaching to Vehicles.] A bicyclist[, when] operating on a highway or highway shoulder[.] shall not attach either the bicycle or himself or herself to a motor[any other] vehicle.

Section 7.[9-]. Operation of Bicycles. (1) A bicycle shall be operated in the same manner as a motor vehicle, except that the[following] traffic conditions established in paragraphs (a) and (b) of this subsection shall apply.

(a)[;-(4)] A bicycle may be operated on the shoulder of a highway unless prohibited by law or ordinance.[Where bicycle travel on shoulders is permitted, it shall not be required.]

(b)[(2)] If a highway lane is marked for the exclusive use of bicycles, the operator of a bicycle shall use the lane unless:

- 1. Travelling at the legal speed;
- 2. Preparing for or executing a left turn;
- 3. Passing a slower moving vehicle;
- 4. Avoiding a hazard;
- 5. Avoiding the door zone of a parked vehicle; or
- 6. Approaching a driveway or intersection where vehicles are permitted to turn right from a lane to the left of the bicycle lane.

(2)[whenever feasible];

(3) Not more than two (2) bicycles shall be operated abreast in a single highway lane unless part of the roadway is exclusively for bicycle use. Persons riding two (2) abreast shall not impede the normal and reasonable movement of traffic.

(3) A bicycle operated in a highway lane with other vehicle types shall keep to the right unless:

- (a) Preparing for and executing a left turn;
- (b) Passing a slower moving vehicle;
- (c) The lane is too narrow to be considered a shared lane. A bicycle may be ridden far enough to the left to prevent overtaking vehicles from attempting to pass in the same lane;

(d) Approaching an intersection or driveway where right-turn movements are permitted. A bicycle may be ridden far enough to the left to avoid potential conflicts with right turning vehicles;

(e) It is necessary to avoid a hazard. A bicycle may be ridden far enough to the left to provide a reasonable safety space to the right;

(f) The bicycle is operating on a one (1) way street with two (2) or more marked traffic lanes. A bicyclist may keep[ride as near as practicable] to the left side of the roadway subject to the conditions in paragraphs (b) through (e) of this subsection;

(g) It is necessary for a cyclist to use a lane other than the right lane to continue his or her route;

(h) Preparing for and executing a left turn; or
(i)[or -(h)] The bicycle is operating at or near a speed consistent with the prevailing flow of traffic[the legal speed].

(4)(a) A bicycle may be operated on a sidewalk or a crosswalk unless prohibited by law or ordinance.

(b) A bicyclist operating on a sidewalk or crosswalk shall have the rights and duties of a pedestrian in the same circumstances.

(c) A bicyclist using a sidewalk or crosswalk shall:

- 1. Slow to the speed of an ordinary walk where pedestrians are

present or reasonably expected to be present or if approaching a crosswalk, driveway, or other crossing where a motor vehicle is expected[present; and]

2. Not suddenly leave the sidewalk or crosswalk and move into the path of another vehicle that is close enough to constitute an immediate hazard; and

3. Yield to pedestrians using the sidewalk or crosswalk.

(d) A bicyclist operating on a crosswalk or sidewalk shall obey an official traffic control device applicable to a pedestrian unless otherwise directed by a police officer or other officially designated person.

(e) A bicyclist operating on a crosswalk or sidewalk shall yield the right of way to a vehicle if crossing the road at a point other than within a marked crosswalk or within an unmarked crosswalk at an intersection.

(5) A bicyclist operating on a highway or highway shoulder may proceed after stopping and if safe against a red light if a traffic signal fails to detect the bicycle.

Section 8. Bicycle Parking. (1) Unless prohibited, a bicycle may be parked on a sidewalk if it does not impede the movement of pedestrians or traffic.

(2) A bicycle may be parked in the roadway at an angle to the curb or edge of the roadway at a location where bicycle parking is allowed.

(3) A bicycle shall not be parked or stopped as established for a vehicle in KRS 189.450(5)(b) through (j).

(4) A bicycle may be parked on the roadway abreast of another bicycle or bicycles near the side of a roadway where parking of vehicles is allowed.

MICHAEL W. HANCOCK, P. E., Secretary
REBECCA GOODMAN, Executive Director
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: February 4, 2014

FILED WITH LRC: February 6, 2014 at noon

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel,
Transportation Cabinet, Office of Legal Services, 200 Mero Street,
Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, May 20, 2015)**

703 KAR 5:200. Next-Generation Learners.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.860

STATUTORY AUTHORITY: KRS 158.6453, [KRS] 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. This administrative regulation establishes the assessment and accountability requirements for students.

Section 1. Definitions. (1) "Achievement" means student performance described with the student performance levels of novice, apprentice, proficient and distinguished on state-required content area tests.

(2) "College readiness" means the percentage of middle school students meeting [ACT established] [benchmarks on the high school readiness test in grade eight (8) that are linked statistically to the ACT] [EXPLORE] [test in reading, English or mathematics.

(3) "College and career readiness" means a readiness percentage calculated by dividing the number of high school graduates who have successfully met an indicator of readiness for college or career with the total number of graduates.

(4) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

(3) [(5)] "Gap" means the average of:

(a) The percentage of students in the non-duplicated student gap group scoring proficient or distinguished on state-required content area tests; and

(b) The percentage of novice reduction goals met for [and the reduction of students in the novice performance level in] individual student gap groups in the state-required reading and mathematics tests.

(4) [(6)] "Growth" means the average of:

(a) The percentage of students that show typical yearly growth in reading or mathematics; [using the student growth percentile] and

(b) The percentage of students who move from [the individual movement of students in reading and mathematics from] one (1) performance level to a higher performance level and continue to perform at the proficient and distinguished level in reading and mathematics.

(5) "Readiness" means:

(a) For a middle school, the percentage of students in grade eight (8) whose scores on the high school readiness test meet benchmarks that are linked statistically to the ACT test, calculated by averaging together the percentages in reading, English, or mathematics; and

(b) For a high school, a readiness percentage calculated by dividing the number of high school graduates who have met an indicator of readiness for college or career by the total number of graduates.

(6) [(7)] "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.

(8) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(9) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(10) "Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts.

41) "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(7) [(12)] "Typical yearly growth" means a student growth percentile at forty (40) or above.

(8) "Writing" means a content area that includes writing on-demand and language mechanics tests.

Section 2. [(1) Except as provided in subsections (2) or (3) of this section,] Kentucky's accountability system to classify schools and districts shall consist of the following components:

(1) [(a)] Next-generation learners, as established in this administrative regulation; and

(2) Additional components established in 703 KAR 5:225 [(b) Next-generation instructional programs and support, as established in 703 KAR 5:230.

(2) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation schools and districts, Kentucky's accountability system to classify schools and districts shall consist of:

(a) The two (2) components included in subsection (1) of this section; and

(b) The next generation schools and districts component.

(3) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation professionals, Kentucky's accountability system to classify schools and districts shall consist of:

(a) The two (2) components included in subsection (1) of this section;

(b) The next-generation schools and district component, if the administrative regulation referenced in subsection (2) has become effective; and
(c) The next-generation professionals component].

Section 3. Next-Generation Learners. (1) Data shall be reported for schools and districts in the following categories:

- (a) Achievement;
- (b) Gap;
- (c) ~~[Individual student]~~Growth;
- (d) Readiness~~[for college or career]~~; and
- (e) Graduation rate.

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the next-generation learners component. This data shall include students with disabilities who participate in the alternate assessment program.

(3) Data in reporting categories shall be attributed to grade level spans for schools and districts as established in this subsection.

(a) Elementary schools shall receive data from achievement, gap, and individual student growth.

(b) Middle schools shall receive data from achievement, gap, ~~[individual student]~~ growth, and readiness~~[for college]~~.

(c) High schools shall receive data from achievement, gap, ~~[individual student]~~ growth, readiness~~[for college or career]~~, and graduation rate.

Section 4. Calculations for Reporting Categories. (1) Achievement shall be reported, equally for each content area, in next-generation learners as established in this subsection.

(a) In elementary, middle, and high schools, for each content area of reading, mathematics, science, social studies, and writing one (1) point for each percent of students scoring proficient or distinguished shall be awarded. One-half (.5) point shall be awarded for each percent of students scoring apprentice. Points shall not be awarded for novice students.

(b) A bonus for distinguished performance shall be calculated as required by this paragraph.

1. The bonus formula shall consider both the percent of students scoring at distinguished and at novice so that a bonus for distinguished student performance shall not overcompensate for novice student performance.

2. Each percent of students scoring distinguished shall receive an additional one-half (.5) point and each percent of students scoring novice shall receive a negative one-half (.5) point.

3. The value generated for novice shall be combined with the value generated for distinguished.

4. Except as provided in subparagraph 6. of this ~~paragraph~~subsection, for schools and districts with a higher distinguished value, the difference between the two (2) values shall be added to the achievement calculation as a bonus for distinguished.

5. For schools and districts with a higher novice value, points shall not be added to the achievement calculation.

6. The distinguished bonus shall not allow the content area value for a school or district to exceed 100 percent.

(c) The following chart shall be used to calculate the points in accordance with paragraphs (a) and (b) of this subsection:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1
Bonus for Distinguished (offset by Novice)	.5 for each percentage of distinguished [)] MINUS .5 for each percentage of novice [)]

(d)1. In accordance with KRS 158.860(7) and KRS 158.6453(5)(e), a district or school council may determine that high school end-of-course examination results be used for a percentage of a student's final grade in the course.

2. Beginning in the 2011-2012 academic year, end-of-course examinations shall be administered in reading, mathematics, science, and social studies, in accordance with the vendors secured through the state procurement process.

3. If the district or school council's policies do not include end-of-course examination grades in the grading policy or if the end-of-course examination grade percentage is less than twenty (20) percent, the district shall submit an annual report to the Commissioner of Education that provides justification for not using end-of-course examinations for at least twenty (20) percent of a student's final grade in the course.

4. Beginning with the 2012-2013 academic year, the report shall be submitted to the Commissioner of Education on or before December 31.

(2) Gap shall be reported in next-generation learners as established in this subsection.

(a) A single gap group called the non-duplicated gap group shall be created. This group shall consist of an aggregate, non-duplicated count of students in the following demographic categories:

- 1. African American;
- 2. Hispanic;
- 3. American Indian or Native American;
- 4. Limited English proficiency;
- 5. Students in poverty based on qualification for free or reduced price lunch; and
- 6. Students with disabilities that have an Individualized Education Program (IEP).

(b) 1. For each tested content area, students scoring proficient or higher in the non-duplicated gap group shall be summed.

2. The sum shall yield a single gap number of students~~[proficient or higher]~~ with:

- a. No student counting more than one (1) time; and
- b. All students in the included groups counted once.~~[3. The individual content area gap percentages shall be averaged for an overall gap percentage.]~~

(c) The non-duplicated gap group shall have a minimum of ten (10) students per content area in the school or district in order to report gap data.

~~(d)[A maximum total of 500 points shall be awarded for non-duplicated gap calculation.]~~ The points for the non-duplicated gap calculation shall be distributed equally among the content areas tested.

(e) Reduction of novice student calculation. Annual novice reduction targets shall be calculated for student groups with a minimum of ten (10) novice students. Points shall be awarded based on the percentage of the annual goal met in the following demographic categories and the non-duplicated gap group:

- 1. African American;
- 2. Hispanic;
- 3. American Indian or Native American;
- 4. Limited English proficiency;
- 5. Students in poverty based on qualification for free or reduced price lunch; and

6. Students with disabilities that have an Individualized Education Program (IEP); and

7. Non-duplicated gap group].

(f) The calculations shall be made using the novice reduction in reading and mathematics.

(g) The novice reduction gap groups shall have a minimum of ten (10) students per content area in the school or district in order to report gap data.

(h)[A maximum of 500 points shall be awarded for the novice reduction calculation.] The points shall be distributed equally between the content areas tested in reading and mathematics.

(i) Gap shall be computed equally using non-duplicated gap group and reduction of novice calculations.

(3)~~[Individual student]~~ Growth shall be reported in next-generation learners as established in this subsection.

(a)~~[Individual student]~~ Growth shall be computed equally based on points from a student growth percentile model and a categorical growth model.

(b)~~[At elementary and middle schools,]~~ Calculations shall include scores from students with data from reading assessments across two (2) years and mathematics assessments across two (2) years.

(c)~~[At high school, calculations shall include scores from students with data from college readiness reading and mathematics assessments across two (2) years.~~

(d) Student growth percentile calculations.

1. One (1) point shall be awarded for each percent of students that shows typical or high growth in reading and one (1) point shall be awarded for each percent of students that shows typical or high growth in mathematics.

2. Typical yearly growth shall be at or above the fortieth (40th) student growth percentile.

3. Points shall not be awarded for students showing lower than typical growth.

(d)(e) For elementary, middle, and high schools, total points shall be fifty (50) [100] for each content area of reading and mathematics for a total of 100 [200].

(f) Categorical growth model calculations shall use the following formula: the sum of the number of students moving from one (1) performance level [category] to a higher level [category], and the number of students remaining at proficient and distinguished, divided by the total number of students.

(e) Points for growth shall be distributed equally between

(g) For elementary, middle, and high schools, total points shall be fifty (50) for each content area of reading and mathematics [for a total of 100].

(4) Readiness [College and career readiness] shall be reported in next-generation learners as established in this subsection.

(a) A readiness percentage for each high school shall be calculated by dividing the number of high school graduates that have successfully met at least one (1) indicator of readiness, as listed in paragraph (b) of this subsection, by the total number of graduates. An individual student shall only be attributed to the calculation one (1) time.

(b) The indicators of readiness shall include the percent of students meeting:

1. The Kentucky Council on Postsecondary Education's System-wide Benchmarks on the ACT in Reading, English and Mathematics established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020;

2. The Kentucky Council on Postsecondary Education's College Placement Test Benchmarks established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020; or

3. The academic and technical career-ready measures as recognized by the Kentucky Board of Education.

(c)1. An individual student shall earn a bonus of one-half (.5) point in the calculation of the readiness percentage if the student met:

a. Either the:

(i) System-wide Benchmarks on the ACT in Reading, English and Mathematics as established in 13 KAR 2:020; or

(ii) College Placement Test Benchmarks as established in 13 KAR 2:020; and

b. The technical career-ready measures as recognized by the Kentucky Board of Education.

2. The bonus shall not allow the calculation of the readiness percentage for a school or district to exceed 100 percent.

(d) For middle schools, a readiness for college percentage shall be calculated by determining the percentage of students who meet the [ACT EXPLORE] benchmarks for reading, English, and mathematics on the high school readiness test that is administered in grade eight (8) and that are linked statistically to the ACT test [as established by ACT, Inc. based on the data from the national administrations of the ACT EXPLORE].

(e) For middle schools, the percent of students in each tested area of reading, English, and mathematics meeting the benchmark score shall be averaged. This value shall be reported as the middle

school college readiness percentage.

(5) Graduation rate shall be reported in next-generation learners as established in this subsection.

(a) The graduation rate shall be computed using the cohort graduation rate [In accordance with the requirements in "Briefing Packet: Graduation Rate Data 2010 State Trends", the graduation rate shall be computed using the:

1. Averaged freshman graduation rate for the years of 2011-2012 and 2012-2013; or

2. The cohort graduation rate beginning with the 2013-2014 year].

(b) The graduation rate for each school and district shall be reported publicly by the Department of Education in the next-generation learners component. [Graduation rate data shall be lagged one (1) year for reporting.]

(6) The total points for next-generation learners shall be awarded as follows:

(a) The total number of points earned in each category of achievement, gap, [individual student] growth, readiness [for college or career], and graduation rate shall be weighted in the following manner:

Grade Range	Achievement	Gap	Growth	Readiness [for College or Career]	Graduation Rate	Total
Elementary	33.3 [30]	33.3 [30]	33.3 [40]	n/a	n/a	99.9 [100]
Middle	28	28	28	16	n/a	100
High	20	20	20	20	20	100

(b) The total number of points in next-generation learners shall contribute to the classification of [classify] schools and districts as established in 703 KAR 5:225 [into one (1) of three (3) classifications:

1. Distinguished;

2. Proficient; and

3. Needs improvement.

(c) Within each of the three (3) classifications, public reports by the Department shall indicate the direction in which school and district performance is moving compared to the prior year report.

(d) In accordance with KRS 158.6455, the Kentucky Board of Education shall amend this administrative regulation or promulgate a new administrative regulation to determine the placement of schools and districts into one (1) of three (3) classifications and the establishment of goals using a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability;

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers; and

3. Be reviewed by the Kentucky Board of Education. Following its review, the Kentucky Board of Education shall approve the final cut scores and goals that determine placement in one (1) of the three (3) classifications by administrative regulation].

(c)(e) If data cannot be calculated for any category of next-generation learners, the weights shall be redistributed using an equal proportion to categories that shall be reported for the school or district.

(7)(a) Students enrolled for a full academic year shall be included in the calculations for achievement, gap, individual student growth, and readiness for college or career for a school and district.

(b) Graduation rate calculations shall be based on the students' final enrollment [include both students enrolled and students earning diplomas]. [Section 5. Incorporation by Reference. (1) "Briefing Packet: Graduation Rate Data 2010 State Trends", August 2, 2011, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to

applicable copyright law, at the Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D., Commissioner of Education

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, May 20, 2015)

703 KAR 5:225. School and district accountability, recognition, support, and consequences.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 7861

STATUTORY AUTHORITY: KRS 158.6453, [;] 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861.

Section 1. Definitions. (1) "Annual measurable objective" or "AMO" means the improvement goal for each school or district calculated from the total[overall] score of the next-generation learners component.

(2) "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(3) "Comprehensive School Improvement Plan" or "CSIP[CDIP]" means a plan developed by the school council or successor pursuant to KRS 160.346 with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4) "District of distinction" means a highest-performing district that:

(a) Meets its current year AMO[~~starting in 2012-2013~~], student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two (2) years;

(c) Does not have a school categorized as a focus school or priority school; and

(d) Scores at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus district" means a district that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts. Focus calculations shall combine two (2) years of data.

(6) "Focus school" means a school that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group[groups] scores for all elementary, middle, and high schools; schools with an individual student subgroup[~~within assessment grades~~] by level that falls in the bottom five (5) percent for individual subjects[with a score in the third (3rd) standard deviation below the state average for all students]; or high schools that have a graduation rate that has been less than eighty (80)[sixty-(60)] percent for two (2) consecutive years. Focus calculations shall combine two (2) years of data; focus calculations for new or reconfigured schools shall use one (1) year of data.

(7) "Graduation rate goal" means the annual graduation rate goal set by the department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2024[2022] and is computed by dividing, by ten (10)[eleven-(11)], the difference between the 2014[2011] baseline percent and ninety-eight (98) percent.

(8) "High-progress district" means a district that:

(a) Meets its current year AMO[~~starting in 2012-2013~~], student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two (2) years; and

(c) Has an improvement score indicating the district is in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the overall score.

(9) "High-progress school" means:

(a) A Title I school that:

1. Meets its current year AMO[~~starting in 2012-2013~~], student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score; or

(b) A Non-Title I school that:

1. Meets its current year AMO,[starting in 2012-2013] student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score.

(10) "Highest-performing district" means a district that:

(a) Meets its current year AMO[~~starting in 2012-2013~~], student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score except that a district shall not qualify as highest-performing if any school in the district is categorized as a focus-school or priority school.

(11) "Highest-performing school" means an elementary, middle, or high school level that:

(a) Meets its current year AMO[~~starting in 2012-2013~~], student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)[sixty-(60)] percent for the prior two (2) years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score.

(12) "Mean" means the sum of the values divided by the number of values.

(13) "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of

instructional programs.

(14) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(15) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(16) "Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts.

(17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).

(18) "Overall score" means the score resulting from a compilation of the accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.

(19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments, with a goal of ninety-five (95) percent.

(20) "Percentile" means the value of a variable below which a certain percent of numbers fall.

(21) "Priority district" means a district that has an overall score in the bottom five (5) percent of overall scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.

(22) "Priority school" means a school that has an overall score in the bottom five (5) percent of overall scores by level for all schools that have failed to meet the AMO for the last three (3) consecutive years ~~been identified as a persistently low-achieving or PLA school as defined by KRS 160.346~~.

(23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO, student participation rate for the all students group and each subgroup, and has met its graduation rate goal.

(24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as established in 703 KAR 5:240, Section 5.

(25) "School of Distinction" means a highest-performing elementary, middle, or high school that:

(a) Meets its current year AMO ~~(starting in 2012-2013)~~, student participation rate, and ~~and~~ graduation rate goal, and is ~~(shall) not~~ ~~(be)~~ identified as a focus school;

(b) Has a graduation rate above eighty (80) ~~(sixty (60))~~ percent for the prior two (2) years; and

(c) Scores at the ninety-fifth (95th) percentile or higher on the overall score.

(26) "Standard deviation" means a measure of the dispersion of a set of data from its average.

(27) "Student subgroup" means a student group that includes African-American, American Indian, Asian, White, Hispanic, English language learners, students in poverty on qualification for free or reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

Section 2. Statewide System of Accountability, Recognition, Support, and Consequences. (1) The accountability system established by 703 KAR chapter 5 shall be called Unbridled Learning: College and Career Ready for All.

(2) An overall score shall be used to classify schools and districts for recognition, support, and consequences. The overall score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) Next-Generation Professionals, as established in an

administrative regulation that will be promulgated by the Kentucky Board of Education to establish the requirements for Next-Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) The timeline and weighting of each component as a percentage of the overall score shall occur as follows:

Year	Component	Percentage of Overall Score
[2011-2012]	[Next-Generation Learners]	[100 percent]
[2012-2013,] [and] [2013-2014, and] 2014-2015]	Next-Generation Learners	Seventy-seven (77) percent
	Next-Generation Instructional Programs and Support	Twenty-three (23) percent
2015-2016 [2014-2015] and subsequent years	Next-Generation Learners	Seventy (70) percent
	Next-Generation Instruction Programs and Support	Twenty (20) percent
	Next-Generation Professionals	Ten (10) percent

(2) If data cannot be calculated for any component, the weights shall be distributed equally to the other components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) A school level or district shall be classified based on the overall score in accordance with the requirements established in this subsection.

(a) By level of elementary, middle, or high, a distribution of scores from the overall score shall be computed in order to determine the percentiles associated with each overall score. [;]

(b) The overall score associated with specific percentiles shall classify a school level or district as follows:

Percentile based on Overall Score	School or District Classification
At or above ninety (90)	Distinguished
At or above seventy (70)	Proficient
Below seventy (70)	Needs Improvement

(c) The overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall be recalculated as the components of the accountability system listed in Section 2 of this administrative regulation are added. When all components have been added, the overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall remain constant for a period of five (5) years before calculation of the overall score associated with specific percentiles shall be re-established.

~~(2) [The mean and standard deviation shall be recalculated and the AMO for each school or district shall be reset as the components of the overall score are added. When all three (3) components of the overall score have been included, the AMO for each school and district shall be set for a five (5) year period before the mean and standard deviation are re-established.]~~

~~(3) Each school level or district shall receive an AMO. The method for determining the AMO shall be as follows:~~

~~(a) Using the total [overall] score of next-generation learners, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and~~

~~(b) The mean and standard deviation shall be recalculated as adjustments of next-generation learners component are made [the components of the accountability system are added and shall follow the timeline established in Section 3 of this administrative~~

regulation].

(3)[(4)](a) The AMO goal for a school level or district classified as needs improvement shall be to increase the total score by one-third (1/3)[overall score by .07] of a standard deviation in a five (5) year period[annually] and shall not be set lower than 1.0.

(b) The AMO goal for a school level or district classified as proficient or distinguished shall be one-half (1/2) the goal of a needs improvement school or district[to increase the overall score by .035 of a standard deviation] annually and shall not be set lower than 0.5.

(4)[(5)] Each school level or district classified as distinguished, proficient, or needs improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as progressing.

(5)[(6)] For a school level with a changed school service area as established in 703 KAR 5:240, Section 6, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as established in this subsection.

(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the school.

(b) The department shall approve the plan and shall assure accurate calculations and the inclusion of all students.

(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs.

(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification.

(e) The intent to submit a plan to recalculate the AMO shall be received by the department by June 30 of the year prior to which the AMO recalculation shall occur.

(6)[(7)] A focus school identified using the non-duplicated student gap group score method shall be determined in accordance with the requirements established in this subsection.

(a) The non-duplicated student gap group shall be ranked for all schools in the state.

(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called focus schools.

(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the Title I schools.

(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the subject area calculation to occur.

(7)[(8)] A focus school identified using the bottom five (5) percent[third (3rd) standard deviation] method shall be determined as established in this subsection.

(a) By level of elementary, middle, or high, individual student subgroups shall be ranked on the percentage[the state average] of proficient and distinguished students for all schools in the state in each subject area of reading, mathematics, science, social studies, and writing[shall be computed, and a standard deviation by subject area for all students shall be computed].

(b) Student subgroups shall number at least twenty-five (25) students in order for the calculation to occur.

(c) A school having an individual student subgroup by level and subject that falls below the bottom five (5) percent[third (3rd) standard deviation] cut score shall be identified as a focus school.

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2)(a) Each recognized school or district shall be authorized to use a department-approved web logo and other promotional materials as may be designated by the department reflecting the category of recognition earned.

(b) Subject to availability of funds, financial rewards may be

used in conjunction with other recognition activities, and may include funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district.

(c) Highest-performing and high-progress schools and districts shall receive special recognition as determined by the Commissioner of Education.

(3) A school or district identified for recognition shall continue to meet eligibility criteria in order to retain its designation and receive recognition for that category.

(4) A school or district identified as a priority school or district or a focus school or district shall not be eligible for recognition as a highest-performing school or district or a school or district of distinction, but may receive recognition as a high-progress school or district, if it meets the definition established in Section 1 of this administrative regulation and the requirements of this section.

(5) In order to qualify for recognition[beginning in 2012-2013], a school or district shall meet the AMO goal, graduation rate goal, and student participation rate, and each high school's graduation rate shall be above eighty (80)[sixty (60)] percent.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) A priority school or district shall undergo the education recovery processes established in KRS 160.346 and 703 KAR 5:260[5:180], in addition to the requirements and consequences established in this administrative regulation.

(3) A focus school or district shall be required to revise its CSIP or CDIP consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a priority or focus school or district shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a priority or focus school or district for the first time shall revise its CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education.

Section 7. Continuing Consequences for Schools and Districts that Remain in Priority or Focus Status for More Than One (1) Year. (1) To exit the priority status, the school or district shall:

(a) Meet AMO goals for three (3) consecutive years;

(b) No longer be identified by the applicable percent calculation of being in the lowest five (5) percent; and

(c) Score at or above an eighty (80)[a seventy (70)] percent graduation rate for three (3) consecutive years.

(2) To exit the focus status, the requirements of this subsection shall be met.

(a) A focus school in the non-duplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement in the non-duplicated student gap group; and

3. Meet AMO for two (2) years in a row.

(b) A focus school in the bottom five (5) percent[third standard deviation] category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the bottom five (5) percent[third standard deviation] cut score;

2. Show improvement in the individual subgroup that triggered the school's placement[non-duplicated student gap group]; and

3. Meet AMO for two (2) years in a row.

(c) A focus school in the category due to graduation rate shall:

1. Have a graduation rate higher than eighty (80)[seventy (70)] percent; and

2. Meet AMO for two (2) years in a row.

(d) A focus district in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3)(a) A school or district that is identified as a priority school or district for two (2) or more consecutive times, or a school or district

that remains in the focus school or district category for three (3) consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation within ninety (90) days of receiving notice from the Commissioner of Education.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(4)(a) In addition to the requirements of this section, a priority school or district that is identified for three (3) or more consecutive times, or a focus school or district that is identified for four (4) or more consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(d) The school or district shall engage in the following actions:

1. Participate in a set of improvement strategies outlined by an accreditation process;

2. If directed by the department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the department; and

3. Accept ongoing assistance and resources throughout the year as assigned or approved by the department.

Section 8. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information gathered from the following:

(a) Progress reports from the school through the district;

(b) Data reviews;

(c) On-site observation; and

(d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the department, each school district shall monitor compliance of individual schools within the district.

Section 9. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall annually develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Executive summary that shall include a vision and a mission;

(b) Needs assessment that shall include:

1. A description of the data reviewed and the process used to develop the needs assessment;

2. A review of the previous plan and its implementation to inform development of the new plan; and

3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development that shall include:

1. Analysis of data to determine causes and contributing factors;

2. Prioritization of needs; and

3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis, that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; and

(e) A process for annual review and revision by the school or district.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

(5) A CSIP shall also include the elements required of schools by KRS 158.649(5).

(6) A CSIP or CDIP for a priority or focus school or district shall also address the following:

(a) Curriculum alignment for schools within the district and within each individual school, ensuring the instructional program is:

1. Research-based;

2. Rigorous;

3. Aligned with the Kentucky Core Academic Standards as established in 704 KAR 3:303; and

4. Based on student needs;

(b) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work, if a priority or focus school;

(c) Activities to target the underperforming areas of achievement, gap, growth, ~~[college and career]~~ readiness, or graduation rate;

(d) Activities to target demonstrators of weakness in program reviews;

(e) Activities to target areas of need identified in teacher and leader effectiveness measures;

(f) School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a priority or focus school;

(g) Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a priority or focus school;

(h) Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a focus school or district; and

(i) Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a priority school.

(7) A priority or focus district shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP. A district containing a priority or focus school shall assist those schools in using these data to inform the needs assessment required by the CSIP.

(8) The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to focus schools and districts as they conduct their needs assessments and revise their CSIPs and CDIPs.

(9) A priority school shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(10) The CDIP for a district with a priority or focus school shall include the support to be provided to the priority or focus school by the district. The priority or focus school's CSIP shall include the

support that will be provided by the district to the school.

(11) The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.

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: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, Associate
Commissioner and General Counsel, Kentucky Department of
Education, 500 Mero Street, First Floor, Capital Plaza Tower,
Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-
9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, May 20, 2015)

**703 KAR 5:240. Accountability administrative procedures
and guidelines.**

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS
158.6453(3)(a) and KRS 158.6455(2)(a) require[requires] the
Kentucky Board of Education to promulgate administrative
regulations to create and implement a balanced statewide
assessment and accountability program that measures the
achievement of students, schools, and districts; complies with the
federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et
seq., or its successor; and ensures accountability. This
administrative regulation establishes administrative procedures
and guidelines for Kentucky's assessment and accountability
program.

Section 1. Definitions. (1) "A1" means a school that:

(a) Is under administrative control of a principal and eligible to
establish a school-based decision-making council; and

(b) Is not an alternative education program operated by, or as
a part of, another school.

(2) "Alternative education program" is defined by KRS
160.380(1)(a).

(3) "Full Academic Year" means 100 or more instructional days
of enrollment within the school year.

Section 2. Assigning Students for School and District
Accountability. (1)(a) A student enrolled in an A1 school for a full
academic year shall be counted in the accountability membership
of the A1 school and shall be attributed to the A1 school for
accountability purposes. This shall include state agency children or
other students who have been enrolled in an A1 school by any
authority.

(b) A student qualifying as an early graduate based on criteria
defined in 704 KAR 3:305 shall be included in the school's
accountability calculation in the year in which the student
graduates whether or not the student has a full academic year of
enrollment.

(2) A student enrolled in an A1 school and attending an
alternative education program during the year as a result of local
school district policies or procedures shall be counted in the
accountability membership of the A1 school and shall be attributed
to the A1 school for accountability purposes if the student's
combined enrollment in the A1 school and alternative education
program is a full academic year.

(3) A student enrolled in an alternative education program for a
full academic year as a result of local school district policies or

procedures without any enrollment in an A1 school during the
same year shall be attributed to the accountability of the district[A1
school] that the student would have attended if not enrolled in the
alternative education program.

(4) A student not enrolled in any A1 school or an alternative
education program for a full academic year, but enrolled in a
district for a full academic year, shall be assigned to the district for
accountability purposes.

(5) The Department of Education shall monitor alternative
school placements. If evidence indicates a district is inappropriately
placing students into alternative programs to avoid inclusion in
accountability, it shall be further investigated by the Department of
Education.

Section 3. Assigning Students for State Accountability. (1)
Students enrolled in alternative education programs, and not
attributed to an A1 school or district, shall be aggregated into a
state level accountability report.

(2) If a student, before completing a full academic year in a
school or district as provided in Section 2 of this administrative
regulation, is enrolled in an alternative education program by a
court, a governmental agency other than a Kentucky public school,
or Kentucky school district, the student shall be accountable to the
state.

Section 4. Inclusion of Schools in Accountability. (1) All A1
schools shall receive annual accountability classifications as
established in 703 KAR 5:200, Section 4(6)(b), for the state's
assessment and accountability system and shall receive
recognition or support as provided by 703 KAR 5:225.

(2)(a) For reporting purposes, all alternative education
programs shall receive annual accountability reports based on
tested students.

(b) Reports for alternative education programs shall be
separate from the A1 school accountability reporting.

(c) The alternative education program[programs] reports
shall outline the unique features and characteristics of the
alternative education program and the appropriate uses and
limitations of the data.

(d) State support and recognition as provided in 703 KAR
5:225 may apply to an alternative education program at the
discretion of the Commissioner of Education if resources are
available.

Section 5. Standard Grade Configuration for Accountability. (1)
Accountable grade level configurations shall be elementary,
middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or
K-6.

(b) Middle school shall include any configuration of grades 5-8
or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall
into one (1), two (2), or three (3) grade level configurations[levels]
for accountability reporting.

Section 6. Reporting of Schools with Changed School Service
Area. (1)(a) For reporting purposes, a school's past data trend
shall be removed from public reporting if a school has a significant
change in its stable population.

(b) A school shall be considered to have a stable population, if
as a result of a change in service area boundaries or local board of
education policies affecting student population served by a school,
the population of the school remains at sixty (60) percent or higher
of its original students from the previous year in the accountability
grades.

(c) To determine if the population is stable, the number of
students in the stable population shall be divided by the total
number of students in the grades included in the accountability
calculations.

1. If the stable population is sixty (60) percent or higher, the
school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the
school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that has an unstable population compared to the prior years by October 1.

Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifications as established in 703 KAR 5:200, Section 4(6)(b), to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards set forth in KRS 158.6455(8).

(b) ~~[-]~~ A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-8, the college readiness tests, and the writing on demand tests.

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students and foreign-exchange students.

(d) Students categorized as English Learners (EL) shall follow testing guidelines set forth by the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor.

(2) High school students shall participate in the state-required end of course testing program after completing the appropriate course linked to the end of course test.

(3) For the state assessments in grades 3-8, the college readiness tests, and the writing on demand tests, a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the ~~the~~ **[Kentucky]** Department of Education.

(4) For the end-of-course examination, the school shall test all students enrolled at the completion of the course associated with the state-required end-of-course examination and shall complete a roster in the electronic application provided by the ~~the~~ **[Kentucky]** Department of Education.

(5) A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all

accountability calculations. A high school student who re-takes a course attached to an end-of-course examination shall take the end-of-course examination at the end of the appropriate coursework.

(6) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption, which shall be subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption shall be excluded from state-required assessments and state and federal accountability calculations.

(7) A foreign exchange student may be assessed with state-required assessments, but the foreign exchange student scores shall not be included in the accountability calculations.

(8) If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the ~~the~~ **[Kentucky]** Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

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: February 13, 2015

FILED WITH LRC: February 13, 2015 at 11 a.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARRS, June 9, 2015)**

808 KAR 6:015. Licensure application; annual report.

RELATES TO: KRS Chapter 286.4

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-590, ~~and~~ 286.4-610(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses/business licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.4-590 requires licensees to file an annual report and authorizes the commissioner to prescribe the form of the annual report. This administrative regulation establishes/prescribes the procedures and forms for submitting an application for licensure as a consumer loan company pursuant to KRS 286.4-430 and for filing an annual report pursuant to KRS 286.4-590.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 286.4-410(1)(a).

(2) "Consumer loan company" means a finance company licensed by the commissioner to engage in the business of making loans in the amount or the value of \$15,000 or less at a greater rate of interest, or consideration therefore, than otherwise permitted by law.

(3) "Licensee" is defined by KRS 286.4-410(1)(b).

(4) "Person" is defined by KRS 286.4-410(1)(c).

Section 2. Licensure as a Consumer Loan Company. A person applying for licensure as a consumer loan company shall complete and submit the following:

(1) Form CL-1, Application for a Consumer Loan License with all required attachments;

(2) If the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application, a Form CL-4, State License Confirmation Form, completed by each state or jurisdiction in which the person is licensed or registered;

(3) The non-refundable application investigation fee established in KRS 286.4-440(1); and

(4) The annual license fee established in KRS 286.4-440(1).

Section 3. Annual Report by Consumer Loan Licensees. A person filing an annual report with the commissioner pursuant to KRS 286.4-590 shall complete and submit the following on or before January 30 of each year:

(1) Form CL-2, Annual Report to the Department of Financial Institutions; and

(2) If the person has more than one (1) licensed location and chooses to complete Form CL-2 as a composite report for all locations, a Form CL-3, Supplement to the Annual Report to the Department of Financial Institutions for each licensed location.

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

(a) Form CL-1 "Application for Kentucky Consumer Loan Company License", March 2015~~[edition]~~;

(b) Form CL-2, "Annual Report to the Department of Financial Institutions", March 2015~~[edition]~~;

(c) Form CL-3, "Supplement to the Annual Report to the Department of Financial Institutions", March 2015~~[edition]~~; and

(d) Form CL-4, "State License Confirmation Form", March 2015~~[edition]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at

<http://www.kfi.ky.gov>.

This is to certify that the persons signing below have reviewed or approved this administrative regulation, prior to its filing by the Department of Financial Institutions with the Legislative Research Commission as required by KRS 13A.220(6)(b).

CHARLES A. VICE, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at noon

CONTACT PERSON: Jessica R. Sharpe, General Counsel, or John C. Allender, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARRS, June 9, 2015)**

808 KAR 6:105. Records required.

RELATES TO: KRS Chapter 286.4

STATUTORY AUTHORITY: KRS 286.4-610(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of consumer loan businesses licensed under KRS Chapter 286.4. This administrative regulation establishes recordkeeping requirements for consumer loan licensees~~[To promote the proper conduct of business by a consumer loan licensee and to further ensure]~~~~[insure]~~~~[effective examination by the commissioner]~~~~[executive director]~~~~[or his representatives]~~.

Section 1. (1) Except as provided by subsection (2) of this section, a~~Every~~ licensee shall keep and maintain the following books and accounting records:

(a) [(1)] "Loan register" or its equivalent record, which shall be the book of original entry and permanent record and shall properly identify each account by number, date of loan, and amount of loan;

(b) [(2)] An individual account ledger card with borrowers which shall:

1. Show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of interest, terms of repayment, the nature of the security, if any, for the loan and the dates of receipt and payment of recording fees together with the amount;

2. Provide separate columns for payments of principal;

3. Be kept in a manner that clearly shows the balance due on principal;

4. Have all payments credited promptly;

5. Have loan or payment cards for consumer loans or sales finance loans maintained in separate files at all times; and

6. If an error is made on the individual account ledger or card, be appropriately corrected without erasures;

(c) [(a)] The account ledger or card shall provide separate columns for payments of principal, and shall be kept in such manner as to~~show~~~~clearly show the balance due on principal. All payments shall be credited promptly upon the account ledger or card.~~

(b) Loan or payment cards for consumer loans and/or sales finance loans shall be maintained in separate files at all times.

(c) If any error should be made on the individual account ledger or card, appropriate correction should be made without erasures.]

(d) [(3)] An appropriate filing system, which shall contain all the current evidences of indebtedness or security which have been signed by the borrower; and

(d) [(4)] An individual index record that shall be maintained for every endorser, accommodation comaker, or surety, except a

spouse listed on the record of the borrower. The individual index record~~[above office record]~~ shall be made immediately available for examination upon request by the Commissioner of the Department of Financial Institutions or his representatives.

~~(2) Instead of (5) in lieu of~~ the books and records described in subsection (1)(a), (b), and (d) of this section~~[4(1), (2), and (4) of this administrative regulation]~~, the licensee may~~[with the prior written approval of the executive director,]~~ maintain the[such] required information with electronic data processing equipment. The[such] required information shall be readily accessible and retrievable.~~[;]~~ Its form and content shall be consistent with the information available from the books and records described in subsection (1)(a), (b), and (d) of this section~~[4(1), (2), and (4) of this administrative regulation]~~.

This is to certify that the persons signing below have reviewed or approved this administrative regulation, prior to its filing by the Department of Financial Institutions with the Legislative Research Commission as required by KRS 13A.220(6)(b).

CHARLES A. VICE, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at noon

CONTACT PERSON: Jessica R. Sharpe, General Counsel or John C. Allender, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2015)**

810 KAR 1:090. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 138.510, 230.225(5)(c), 230.400

STATUTORY AUTHORITY: KRS 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires~~[authorizes]~~ the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

Section 1. Definitions. (1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.

(2) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 1:001, Section 1(30).

(3) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(4)~~[(3)]~~ "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.

(5)~~[(4)]~~ "KTDF" means the Kentucky Thoroughbred Development Fund.

(6)~~[(5)]~~ "KTDF Advisory Committee" means the committee established by KRS 230.400(2) to advise and assist the KHRC in the development of a supplemental purse program pursuant to KRS 230.400(3)(a).

(7)~~[(6)]~~ "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

(8)~~[(7)]~~ "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

(9)~~[(8)]~~ "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

(10)~~[(9)]~~ "Official Registrar" means the association recognized

and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.

Section 2. KTDF Monies Earned. (1) One live thoroughbred association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as provided by this subsection.~~[follows:]~~

(a) The association conducting the live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association on which the wagering is placed for purposes of calculating that association's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn KTDF money to be deposited in the KTDF account for that association as provided by KRS 138.510(1).

Section 3. KTDF Reconciliation. (1) Each association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission the actual KTDF purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet which has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the recommendation~~[approval]~~ of the KTDF Advisory Committee and the approval of the commission:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If at the close of a live race meet, an association offering wagering on historical horse races has a balance of KTDF monies earned from historical horse race wagers, which has not been distributed in actual KTDF purse distribution, then the association may choose one (1) of the following options to distribute a portion of the balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) Use the historical horse race KTDF monies previously earned to supplement purses at future live racing meets held by that association;

(b) Use historical horse race KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse

allocations; or

(c) Use historical horse race KTDF monies previously earned to supplement purses at another licensed thoroughbred Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the KTDF account shall be charged to each association by the commission based on the percentage of funds generated by each association for the previous calendar year.

(7)(6) An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(8)(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

Section 5. Consent to Investigate by KTDF Applicants. The filing of a registration with the official registrar shall authorize the KTDF Advisory Committee and commission to investigate and verify information provided by the Applicant.

Section 6. Denial or Revocation of Registration. (1) The KTDF Advisory Committee may recommend to the commission to deny or revoke the registration of a horse to the KTDF if the Applicant:

(a) Provides the official registrar of the KTDF, the KTDF Advisory Committee, or the commission with incorrect, false, or misleading information concerning the registration of a foal or horse; or

(b) Violates this administrative regulation in any other manner.

(2) An applicant who provides incorrect, false, or misleading information concerning the registration of a foal or horse or violates this administrative regulation in any other manner shall be subject to the following penalties:

(a) Denial or revocation of the registration of the horse with the KTDF; or

(b) A bar of the applicant from registering foals or horses to the KTDF for a period of one (1) to five (5) years, based on the seriousness of the violation, beginning with the year in which the violation occurred.

(3) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant from being eligible to receive KTDF monies.

(4) The denial or revocation of the registration of a horse to the KTDF, and a bar of the applicant from registering foals or horses to the KTDF shall be subject to appeal and adjudication in accordance with 810 KAR 1:029 and KRS Chapter 13B.

ROBERT M. BECK, JR., Chairman

AMBROSE WILSON, IV, Secretary

APPROVED BY AGENCY: March 27, 2015

FILED WITH LRC: April 8, 2015 at 11 a.m.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amended After Comments)

704 KAR 3:370. Professional Growth and Effectiveness System.

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel and to develop written guidelines for local school districts to follow in implementing a statewide system of evaluation for certified school personnel. This administrative regulation establishes a statewide professional growth and effectiveness system to support and improve the performance of all certified school personnel.

Section 1. Definitions. (1) "Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(3) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluator" means the primary evaluator as described in KRS 156.557(5)(c)2.

(8) "Formative evaluation" is defined by KRS 156.557(1)(a).

(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.

(10) "Job category" means a group or class of certified school personnel positions with closely related functions.

(11) "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS 156.557(1)(b).

(13) "Observation" means a data collection process conducted by a certified observer, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or

worksite visits of any duration.

(14) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(15) "Observer calibration[recalibration]" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

(16) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals.

(17) "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.

(18) "Peer observation" means observation and documentation by trained certified school personnel below the level of principal or assistant principal.

(19) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated.

(20) "Performance rating" means the summative description of a teacher, other professional, principal, or assistant principal evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation.

~~(21) "Preschool teacher" means a certified school personnel who holds a certificate required by 16 KAR 2:040 and who meets the preschool lead teacher qualifications required by 704 KAR 3:410, Section 7.~~

(22) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR 3:050.

~~(22)~~(23) "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

~~(23)~~(24) "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

(a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

~~(24)~~(25) "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

~~(25)~~(26) "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

~~(26)~~(27) "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy

of their knowledge and performance for the purpose of identifying areas for professional learning and growth.

~~(27)~~~~(28)~~ "Sources of evidence" means the multiple measures listed in KRS 156.557(4) and in Sections ~~7~~~~[8]~~ and 10 of this administrative regulation.

~~(28)~~~~(29)~~ "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

~~(29)~~~~(30)~~ "Student growth" is defined by KRS 156.557(1)(c).

~~(30)~~~~(31)~~ "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

~~(31)~~~~(32)~~ "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

~~(32)~~~~(33)~~ "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment~~[classroom experience]~~ and professional practice of the teacher or other professional evaluatee.

~~(33)~~~~(34)~~ "Summative evaluation" is defined by KRS 156.557(1)(d).

~~(34)~~~~(35)~~ "Teacher" means a certified school personnel who has been assigned the~~[lead]~~ responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR [16 KAR 2:010 or 16 KAR 2:020].

~~(35)~~~~(36)~~ "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.

Section 2. Implementation Timeline. (1) Beginning with the 2015-2016 [During the 2014-2015] school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except ~~[other professionals, preschool teachers, and]~~ teachers of career and technical education in area technology centers. ~~[If the system plan is approved by the local board of education, a local school district may use the results from the system to inform personnel decisions. The use of a district's present evaluation plan, in addition to the system, during the 2014-2015 school year, shall comply with this administrative regulation. During the 2014-2015 school year, the overall school and district accountability scores described in 703 KAR 5:225 shall not include the results from the system.]~~

(2) Teachers of career and technical education in area technology centers shall fully implement the requirements of KRS 156.557 and this administrative regulation beginning with the 2016-2017 school year. Beginning in the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals and results from the system shall be included in the overall school and district accountability model. Beginning with the 2016-17 school year, a local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers of career and technical education in area technology centers~~[During the 2014-2015 school year, all school districts shall pilot the system for other professionals and preschool teachers. During the 2014-2015 school year, school districts shall evaluate preschool teachers and other professionals pursuant to the requirements of Section 13 of this administrative regulation. Beginning in the 2015-2016 school year, all school districts shall fully implement the system for other professionals and preschool teachers.]~~

(3) Beginning in the 2015-2016 school year, all school districts shall fully implement the system for all certified school personnel, use the system to inform personnel decisions for all certified school personnel, and the overall school and district accountability scores described in 703 KAR 5:225 shall include the results from the

system].

Section 3. Approval of Local Professional Growth and Effectiveness System Plan and Procedures. (1) Each local school district shall submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.

Section 4. Local Professional Growth and Effectiveness Policies. The local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.

Section 5. Local Evaluation Procedures and Forms. (1) A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions.

(2) The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year~~[- documentation of peer observations in the department-approved technology platform,]~~ and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the ~~summative~~~~[formative]~~ process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.~~[and,]~~ At a minimum, one (1) ~~full~~~~[classroom]~~ observation shall be conducted during the summative year. Observations may be documented~~[and to document all observations]~~ in the department-approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference be held at the end of the summative evaluation cycle and include all applicable system data.

(i) The district shall require summative evaluation, with multiple

observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel be documented in writing and be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department-approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response be included in the official personnel record. ~~[(3) The local board of education shall develop, adopt, and submit to the department for approval procedures for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.]~~

Section 6. Training and Testing of Evaluators and Observers.

(1) The district shall include evaluation and observation training in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements of the district's system plan and procedures prior to evaluating a certified school personnel.

(3) An evaluator shall be trained ~~[and]~~ tested, and approved on a four (4) year cycle.

(4) Year one (1) of the district's evaluator training cycle shall include the following training requirements:

(a) Training on KRS 156.557 and the requirements of this administrative regulation;

(b) Training in identifying effective teaching and management practices, in effective observation and conferencing techniques, in development of student growth goals, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;

(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department; and

(d) Training, for all other evaluators, by a provider who has been approved by the department as a trainer for the Instructional Leadership Improvement Program established in 704 KAR 3:325.

(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an

individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is evaluating~~[observing]~~ teachers or other professionals~~[for the purpose of evaluation]~~.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:

(a) Observer calibration~~[recalibration]~~ training, in the department-approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;

(b) Update training on professional growth and effectiveness statutes and administrative regulations; and

(c) Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification~~[refresher-observer certification]~~ training and testing.

(9) The district shall require peer observers to complete the department-approved~~[developed]~~ peer observer training at least once every three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.

Section 7. Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals. (1) The district's professional practice rating form shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following:

(a) Planning and Preparation Domain~~[- Components shall include: Knowledge of Content and Pedagogy, Demonstrating Knowledge of Students, Setting Instructional Outcomes, Demonstrating Knowledge of Resources, Designing Coherent Instruction, and Designing Student Assessments];~~

(b) Classroom Environment Domain~~[- Components shall include: Creating an Environment of Respect and Rapport, Establishing a Culture of Learning, Managing Classroom Procedures, Managing Student Behavior, and Organizing Physical Space];~~

(c) Instruction Domain~~[- Components shall include: Communicating with Students, Questioning and Discussion Techniques, Engaging Students in Learning, Using Assessment in Instruction, and Demonstrating Flexibility and Responsiveness]; and~~

(d) Professional Responsibilities Domain~~[- Components shall include: Reflecting on Teaching, Maintaining Accurate Records, Communicating with Families, Participating in a Professional Community, Growing and Developing Professionally, and Showing Professionalism].~~

(2) The district's professional practice rating evaluation form shall list, in each component, the performance criteria that characterize effective practice~~[teaching]~~ and apply to the~~[teacher]~~ evaluatee.

(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an~~[a teacher]~~ evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the evaluatee's~~[teacher's]~~ first thirty (30) calendar days of the school year shall not apply to the evaluatee~~[teacher]~~ until the following school year.

(4) A professional practice rating evaluation form shall be specific to the evaluatee's~~[teacher's]~~ job category.

(5) The evaluator shall utilize The Framework for Teaching

Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professional Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluatee[teacher] on each of the four (4) domains.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, observation, and student voice surveys, in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) domains listed in subsection (1) of this section.

(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.

(8) The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;

2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) At a minimum, the evaluator shall use the following decision rules in this subsection to determine a professional practice rating.

(c) If a teacher or other professional is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.

(d)[(e)] If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.

(e)[(d)] If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.

(f)[(e)] If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

(g)[(f)] If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

(h)[(g)] If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, when available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.

2. Because individualized education plan (IEP) goals are student-specific, IEP goals may inform, but shall not be used as, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using

professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals.

Section 8. Overall Performance Category of Teachers or Other Professionals. (1) The overall performance category for teachers or other professionals shall be determined by combining the teacher's professional practice rating and the teacher's overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. ~~The professional practice rating is exemplary and the overall student growth rating is low;~~

2. The professional practice rating is accomplished and the overall student growth rating is expected; or

2.~~3.~~ The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. ~~The professional practice rating is exemplary and the overall student growth rating is low;~~

2. The professional practice rating is accomplished and the overall student growth rating is low;

3.~~2.~~ The professional practice rating is developing and the overall student growth rating is expected;

4.~~3.~~ The professional practice rating is developing and the overall student growth rating is low; or

5.~~4.~~ The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.

Section 9. Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluatee[teacher]-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a

summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluated~~teacher~~-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. The evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. The evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. The evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. The evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. The evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. The evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation

conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) At a minimum, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

~~(e) One (1) goal shall address the needs outlined in the school's comprehensive school improvement plan.~~

~~(f) One (1) goal shall be based on local student growth data.~~

~~(f)(g)~~ The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

~~(g)(h)~~ The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

~~(h)(i)~~ The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System

Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;
2. The professional practice rating is exemplary and the overall student growth rating is expected; or
3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or
2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;
2. The professional practice rating is accomplished and the overall student growth rating is low;
3. The professional practice rating is developing and the overall student growth rating is expected; or
4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals. (1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.

(2) The district shall explain and discuss performance criteria

and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.

(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation[Evaluation of Other Professionals and Preschool Teachers During the 2014-2015 School Year. (1) The district shall include, in its professional growth and effectiveness plan, a plan for the evaluation of other professionals and preschool teachers during the 2014-2015 school year.

(2) The district's procedures for other professional and preschool teacher evaluatees, whose evaluation cycle requires evaluation during the 2014-2015 school year, shall include the requirements established in this subsection.

(a) Beyond the minimum requirements set forth in this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(b) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of an evaluation cycle that ends during the 2014-2015 school year, all evaluation data.

(c) The district shall require multiple observations to be conducted of an evaluatee who has earned continuing service status pursuant to KRS 161.740 and whose observation results are ineffective.

(d) The district shall require a summative evaluation to occur, if required by the evaluation cycle of the evaluatee.

(e) The district shall include the evaluation in the evaluatee's official personnel record.

(f) The district shall provide in the evaluation process an opportunity for a written response by the evaluatee and shall include the response in the evaluatee's official personnel record.

(g) A copy of the evaluation shall be provided to the evaluatee.

(3) The evaluation form shall include a list of performance criteria. Under each criterion, specific descriptors or indicators that can be measured or observed and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.

(4) The evaluation criteria and process shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the 2014-2015 school year.

(5) An evaluative form shall be specific to each job category. The district may use forms for pre- and post-evaluation conferences.

(6) The district shall provide evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.

(7) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation.

Section 14. Evaluation of Certified Administrators in the 2014-2015 School Year. (1) The district shall include, in the professional growth and effectiveness plan, a plan for the evaluation of certified administrators.

(2) Beyond the minimum requirements set forth in KRS 156.557 and this administrative regulation, the local district may

establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

~~(3) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation; the summative evaluation conference held at the end of the summative evaluation cycle; and the inclusion of all professional growth and effectiveness data.~~

~~(4) The district shall document the certified administrator's summative evaluation decision, include documentation of the sources of evidence used in determining the performance rating of the evaluatee, and include these documentations in the evaluatee's official personnel record.~~

~~(5) The district shall provide an opportunity for a written response by the evaluatee, and the response shall be included in the evaluatee's official personnel record.~~

~~(6) A copy of the evaluation shall be provided to the evaluatee.~~

~~(7) The evaluation form for certified administrators shall include a list of performance criteria that characterize effective administrative practices.~~

~~(8) Under each criterion, specific descriptors or indicators shall be listed.~~

~~(9) The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.~~

~~(10) The evaluation criteria and process used to evaluate certified administrators shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year.~~

~~(11) The district's evaluation form shall be specific to the evaluatee's job category. The district may utilize forms for pre- and post-evaluation conferences.~~

~~(12) The district shall provide certified administrator evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.~~

~~(13) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation[.]~~

Section 14.[15:] District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 15.[16:] Reporting. (1)[Beginning in the 2014-2015 school year,] Districts shall report to the department the percentage of principals, assistant principals,[and] teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation[and the percentage of teachers on each plan listed in Section 9 of this administrative regulation].

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals,[and] teachers, including other professionals in each overall performance category.

Section 16.[17:] Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.

Section 17.[18:] Local Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the local evaluation appeals panel:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the local evaluation appeals panel; and

(3) A right to have the evaluatee's chosen representative present at the hearing.

Section 18.[19:] State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the local evaluation plan or absence of a district local evaluation plan shall render the evaluation void, and the certified employee shall have the right to be reevaluated.

Section 19.[20:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014;

(b) "Principal and Assistant Principal Performance Standards", May 2014;

(c) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals", April 2015[May 2014];

(d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;

(e) "Teacher and Other Professional Evaluation Crosswalk", April 2015[May 2014];

(f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;

(g) "Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals", April 2015[July 2014]; and

(h) "Kentucky Professional Growth Plan for Assistant Principals and Principals", July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Next Generation Learners, 18th[4st] Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D.

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 3 p.m.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a statewide professional growth and effectiveness system, as required by KRS 156.557, for the evaluation, support and improvement of performance of all certified school personnel in school districts.

(b) The necessity of this administrative regulation: KRS 156.557 requires the agency to develop a framework for a statewide personnel evaluation system for all certified school personnel in school districts and to establish a statewide professional growth and effectiveness system for the evaluation, support and improvement of performance of all certified school personnel in school districts. This administrative regulation includes a framework for a statewide personnel evaluation system and establishes a uniform method of evaluation of certified school personnel in school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: As required by KRS 156.557, this administrative regulation establishes a framework for a statewide personnel evaluation system, including a uniform method of evaluation, support and improvement for certified school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the requirements for the uniform evaluation of certified school personnel, below the level of superintendent as required by KRS 156.557.

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

(a) How the amendment will change this existing administrative regulation: This amendment to the regulation does the following: Updates implementation timelines for various evaluatee groups. Preschool teachers are no longer a pilot group and will be evaluated as all other certified teachers under the proposed amendment. Other professionals will also end their pilot period and be evaluated pursuant to the system established for certified teachers. A system of evaluation of certified administrators at the district level is added to the regulation. The proposed amendment incorporates teachers of career and technical education in area technology centers. The proposed amendment requires that school districts begin using results from the PGES system to inform personnel decisions for teachers, principals and assistant principals beginning in the 2015-2016 school year. Districts must use results from the PGES system to inform personnel decisions for other professionals, certified administrators, and teachers of career and technical education in area technology centers beginning in the 2016-2017 school year. This amendment makes a change to a decision rule for a teacher's overall rating. The United States Department of Education (USED) requires this change as a contingency of approval of Kentucky's ESEA. Finally, the amendment makes entry of data into the state-approved technology platform optional for all evaluation components except the summative rating.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary in order to comply with KRS 156.557, meet the requirements of the USED ESEA waiver and address concerns from the field.

(c) How the amendment conforms to the content of the authorizing statute: The authorizing statute requires a statewide professional growth and effectiveness system for all certified personnel. The proposed amendment ends system pilots and

requires evaluation of additional evaluatee groups. The amendment provides for evaluation of all certified school personnel below the level of superintendent as required by KRS 156.557.

(d) How the amendment will assist in the effective administration of the statutes: The regulation and amendments provide the framework for evaluation of all certified school personnel as required by KRS 156.557.

(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 all certified school personnel.

(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 districts will revise their certified evaluation plan and submit to the Department of Education for approval. Districts will need to apply the guidelines of the regulation to all certified personnel and not just teachers, principals and assistant principals.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts shall revise their certified evaluation plans to include newly incorporated evaluatees and comply with the proposed amended regulation. School districts shall provide training and resources to school and district personnel to ensure consistent and accurate implementation of the requirements of the statewide evaluation system for certified school personnel.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Evaluation of certified school personnel will lead to the support and improvement of the performance of all certified school personnel and promote the continuous professional growth and development of skills needed to be a highly effective certified school personnel as intended by KRS 156.557.

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

(a) Initially: Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(b) On a continuing basis: Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply because the requirements of this administrative regulation apply to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.557.

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

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

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

(c) How much will it cost to administer this program for the first year? Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-): The Kentucky Department of Education cannot accurately estimate the cost of administering this administrative regulation for each of Kentucky's school districts. Individual costs will vary depending on the size and efficiency of each school district. Local school districts may direct currently available state and federal grant funds, including funds currently used for evaluation of teachers for implementation of this administrative regulation.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amended After Comments)

805 KAR 1:100. Commission's rules of procedure, spacing of deep well drilling, wildcat wells, and pooling of interests.

RELATES TO: KRS 61.874, 353.180, 353.510, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, Chapter 424

STATUTORY AUTHORITY: KRS[13A.100,] 353.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.565 authorizes the Kentucky Oil and Gas Conservation Commission to promulgate administrative regulations necessary to prevent waste, protect correlative rights, govern the practice and procedure of the commission, and administer the provisions of KRS 353.651 and 353.652. KRS 353.565(5) and (7)(a) require[requires] the Kentucky Oil and Gas

Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units, and pooling of interests. This administrative regulation establishes[provides information necessary for owners and operators to comply with] requirements related to drilling deep vertical and deep horizontal wells for the purpose of oil or gas extraction[in the Commonwealth].

Section 1. Definitions.[and Construction. Unless the context otherwise requires, the following words and terms shall have the following meanings when used in these administrative regulations:]

- (1) "Commission" is defined by KRS 353.510(4).
- (2) ["Commissioner" is defined by KRS 353.510(2).
- (3) "Correlative rights" is defined by KRS 353.510(6).
- (3) [(4)] "Deep well" is defined by KRS 353.510(16).
- (4) [(5)] "Department" is defined by KRS 353.510(1).
- (6) "Director" is defined by KRS 353.510(3).
- (5) [(7)] "Drilling unit" is defined by KRS 353.510(19).
- (6) [(8)] "Field" is defined by KRS 353.510(10).
- (7) [(9)] "Gas" is defined by KRS 353.510(8).
- (8) [(10)] "Horizontal well" is defined by KRS 353.510(25).
- (9) [(11)] "Just and equitable share of production" is defined by KRS 353.510(11).
- (12) "Oil" is defined by KRS 353.510(7).
- (10) [(13)] "Operator" is defined by KRS 353.510(17).
- (11) [(14)] "Overriding royalty interest owner" means a person other than a royalty owner, with[that has] a right to a percentage share of production[,] or the value derived from production that is:
 - (a) [which is] Free of all costs of drilling and production; and
 - (b) [which is] Created by the lessee or working interest owner and paid by the lessee or working interest owner.
- (12) [(15)] "Person" is defined by KRS 353.510(5).
- (13) [(16)] "Pool" is defined by KRS 353.510(9).
- (14) [(17)] "Prevailing royalty" is defined by KRS 353.510(27).
- (15) [(18)] "Royalty owner" is defined by KRS 353.510(18).
- (16) [(19)] "Vertical well" is defined by KRS 353.510(26).
- (17) [(20)] "Well" is defined by KRS 353.510(14).
- (18) [(21)] "Wildcat well" means any deep vertical or horizontal well that[which] is drilled:
 - (a) [Drilled] With the intent of discovering or producing hydrocarbons from a formation or formations not previously productive of oil or gas well within 10,000 feet of its location; or
 - (b) [Drilled] Under [such] proven geological conditions that, even though located within 10,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool.
- (19) [(22)] "Working interest owner" means an operator with[that has] the obligation to bear all or a proportionate share of the costs and expenses of unit operation["Department" means the Department of Mines and Minerals as defined in KRS 353.010;
 - (2) "Commissioner" means the Commissioner of the Department of Mines and Minerals as defined in KRS 354.010;
 - (3) "Director" means the Director of Oil and Gas Conservation as provided in KRS 353.530;
 - (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;
 - (5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator or fiduciary of any kind;
 - (6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;
 - (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;
 - (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined above as oil;
 - (9) "Pool" means an underground reservoir containing a

common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;

(10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field" unlike "pool" may relate to two (2) or more pools;

(11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil or gas in that part of a pool underlying his tract or tracts;

(12) "Well" means a borehole drilled, or proposed to be drilled, for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas or other fluid therein or one into which any water, gas or other fluid is being injected;

(13) "Deep well" means any well drilled and completed below the depth of 4,000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4,000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper;

(14) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(15) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (14) of this section;

(16) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit.

(17) The singular shall include the plural, and the masculine gender shall include the feminine and neuter].

Section 2. Rules of Procedure. (1)(a) Except as established in paragraph (b) of this subsection, all orders of the commission establishing drilling units, pool or field-wide units, or special field rules shall be issued only after notice and hearing in accordance with this administrative regulation and consistently with the provisions of KRS 353.500 to 353.720.

(b) The commission may issue emergency orders without notice and without an initial hearing upon a finding of necessity to prevent waste, irreparable injury, or other cause.

1. An emergency order shall remain in effect for not more than forty-five (45) days from the effective date.

2.a. Immediately upon entering an emergency order, the commission shall call a hearing on the subject matter thereof.

b. The hearing shall be held prior to the expiration of the order.

(2) A public hearing pursuant to KRS Chapter 13B shall be conducted by the commission:

(a) As a result of a reported violation of a requirement of this administrative regulation;

(b) To consider a permit application;

(c) Upon a request to establish a drilling unit, pool, field-wide unit, or special field requirement; or

(d) To consider a combination of items established in paragraphs (a) through (c) of this subsection[Rules, administrative regulations, and orders of the commission of general, or statewide, effect shall be submitted, published, and reviewed in accordance with KRS Chapter 13A. Hearings on such rules, administrative regulations, or orders shall be held, in accordance with KRS Chapter 13A.

(2) Rules, administrative regulations, or orders other than those of general, or statewide, effect, including but not limited to orders establishing drilling units, pool or field-wide units, or special field rules, shall be adopted only after notice and hearing in accordance with these rules and consistently with provisions of KRS 353.500 to 353.720].

(3) All hearings before the commission shall be open to the public. Hearings shall be called by the commission for the purpose of taking an action in respect to any matter within its jurisdiction upon its own motion or upon the request[or application] of any interested party.[Applications or] Requests for hearing (except as otherwise provided herein) shall be written and may be in the form of a letter, shall be brief and concise, shall state in general terms the matter upon which action of the commission is desired, the interest of the applicant, or person making the request, the action sought, and the reasons therefor.

(4) The director shall maintain a docket book for the commission.[, and]

(a) Each written request for a hearing and each hearing[All applications or requests for hearings and all hearings] called on motion of the commission shall be docketed and given a docket number, and a file carrying each[such] number shall be opened by the director.

(b) Each written request for a hearing;[All applications for hearing,] a copy of the notice of hearing, together with proof of its publication pursuant to subsection (7) of this section;[,] the originals of all instruments, documents, plats, and other data filed in connection with the hearing or the subject matter thereof;[,]; a transcript of all evidence taken at the hearing; and[,]; the originals or copies of all correspondence with the commission concerning the[such] hearing or the subject matter thereof shall be stamped with the docket number of the hearing and placed and kept in the file carrying the[such] number.

(c) The docket book and all files pertaining to hearings shall be open to the public at all reasonable times but shall not be removed from the custody of the commission or its employees.

(d) Copies of written requests for hearings,[all such] instruments, documents, plats, other data, and correspondence shall be furnished to any interested party upon payment of the cost of making such copies in accordance with the Kentucky Open Records Act, KRS 61.874.

(e) Each notice[. All notices] of hearing shall refer to the docket number thereof.[Copies of applications for hearing shall be furnished by the director to any person upon request in accordance with the Kentucky Open Records Act.]

(5) All hearings shall be held in Frankfort[Lexington], Kentucky, unless otherwise ordered.

(6)(a) Upon receipt of a proper request or completed application for hearing, the commission shall call a hearing within thirty (30) days.

(b)[, and after such hearing and with all convenient speed, and in any event] Within thirty (30) days after the conclusion of the hearing, the commission shall take action with regard to the subject matter thereof.

(7)(a) Notice of each hearing[all hearings] shall be given by publication[, as authorized by KRS 353.680,] in accordance with KRS Chapter 424.

(b) If[When] required by KRS 353.651 or 353.652 to give personal notice to all persons reasonably known to own an interest in the oil and gas in an area to be unitized or for which special field rules are proposed, the commission shall give the[such] notice by registered mail unless a person has given a mailing address as established[provided] in subsection (8) of this section.

(8)(a) The director shall maintain a general mailing list of[and

~~shall place thereon~~ the names and addresses of all persons[, firms, or corporations] who make request in writing to be included on the general mailing[such] list. Each person[, firm, and corporation] on the general[such] mailing list shall be mailed by first class mail at the address listed a copy of all notices and orders issued by the commission.

(b) The director shall maintain a mailing list for each field in the state containing one (1) or more deep wells and shall place on each mailing for each field[such] list the names and addresses of all persons[, firms, or corporations] who make request in writing to be included~~[thereon]~~. Each person included on the mailing list for~~[of]~~ a[any] field shall be mailed by first class mail at the address listed a copy of all notices and orders issued by the commission pertaining to that[as to such] field.

(c) The failure to mail a copy of a notice to a person on a list established by this section shall not invalidate a[any such person][, firm, or corporation]~~[shall not affect the validity of any]~~ hearing held pursuant to this section[the notice published in accordance with subsection (7) of this section or any rule, administrative regulation, or order issued pursuant to such hearing,] unless the person omitted from the notice mailing is[such person is one reasonably] known to own an interest in the oil and gas in an area to be unitized and for which special field rules are proposed~~[and who is thus entitled to personal notice by KRS 353.651 or 353.652. When a person entitled to personal notice of a hearing has requested to be placed on either the general or a field mailing list, a notice mailed by first class mail to the address given shall constitute compliance with KRS 353.651 or 353.652, as the case may be].~~

(9) Each notice of a hearing[Notices of all hearings] shall state the:

(a) Time and place of the hearing;

(b)~~[, the]~~ Name of the party requesting the hearing;

(c) Nature of the hearing;

(d)~~[, the nature thereof, the]~~ Action sought; and

(e)~~[, and the]~~ Docket number.

(10) A[No] notice by personal service shall not be necessary except as required by KRS 353.651 or 353.652 and to each person reasonably known to have an interest in the proceedings before the commission[or by special order of the commission entered on its minutes].

(11) After notice of a hearing is once given, the hearing may be continued to another day and from day to day by order of the commission entered on the day fixed for the hearing.

(12) An[The commission may adopt an emergency rule, administrative regulation, or order of general, or statewide, effect without notice and hearing upon a finding of necessity to prevent waste, prevent irreparable injury, or other cause and issuance by the Governor of an executive order providing that it shall become effective upon submission to the Legislative Research Commission in accordance with KRS Chapter 13A. Such a rule, administrative regulation, or order shall provide that it will remain in force no longer than 120 days from the date of filing. If the commission desires to make such a rule, administrative regulation, or order permanent, it shall proceed as required by KRS Chapter 13A.

(13) The commission may adopt emergency rules, administrative regulations, or orders other than those of general, or statewide, effect without notice and hearing upon a finding of necessity to prevent waste, irreparable injury, or other cause. Any such rule, administrative regulation, or order shall provide that it will remain in force no longer than forty-five (45) days from its effective date. Immediately upon entering such a rule, administrative regulation, or order, the commission shall call a hearing on the subject matter thereof, and such hearing shall be held prior to the expiration of the rule, administrative regulation, or order.

(14) All interested person[persons]~~[parties]~~ shall have the right to be heard at a hearing[all hearings] and to present witnesses and other evidence whether or not represented by legal counsel or technical assistance. In addition to verbal testimony, the commission may require any protest made to be reduced to writing and filed.

(13)~~[(15)]~~ In a[any] proceeding before the commission

subpoenas may be issued requiring the attendance of witnesses and the production of books, records, maps, charts, diagrams, and other pertinent documents material to the matters lawfully before the commission at the designated place of hearing.

(14) Each hearing[(16) Hearings] shall be opened with the reading of the notice or notices. The request for hearing, the notice or notices thereof, and proof of the due publication of the notice or notices of the hearing shall be made a part of the record of the hearing.

(15) Each witness[(17) All witnesses] shall be required to testify under oath, administered by a member of the commission, to tell the truth, the whole truth, and nothing but the truth, and all witnesses shall be subject~~[,]~~ to direct and cross-examination by any member of the commission or by any~~[interested]~~ party or the party's[its] legal[by his] representative.

(16)~~[(18)]~~ In all noncontested matters or in contested matters in which[where] those parties who appear in person at the hearing agree thereto, sworn affidavits may be received in evidence. The commission reserves the right to reject an affidavit[any and all such affidavits] and to require the affiant to appear in person if more information is necessary.

(17)~~[(19)]~~ The materiality, relevancy, and competency of any testimony or other evidence shall be subject to challenge by any party to the hearing or by any member of the commission. An objection[When so interposed, such objections] shall be acted upon by the chairman or by the acting chairman, the[his] ruling thereon being subject to change by a majority vote of the commission members present.

(18) Each party[then sitting].

(20) All parties[persons] presenting an exhibit[exhibits] shall file a total of eight (8) copies with the reporter. A suggested form of order shall be filed as five (5) copies[All suggested forms of orders shall be presented in quintuplicate]. These requirements may be waived by the commission if compliance would be unduly burdensome.

(19)~~[(21)]~~ The commission shall [from time to time] by order entered on its minutes appoint a competent~~[shorthand]~~ reporter or videographer.

(a) Each hearing[. All hearings] shall be recorded by a reporter or videographer appointed by the commission and sworn faithfully to discharge his or her duties~~[in accordance with law and the direction of the commission].~~

(b) The reporter or videographer shall transcribe or record hearings only upon order of the commission.

(c) If a transcript or video record is ordered by the commission, the transcript or video record[When such an order has been entered, transcripts] shall be available for:

1. Inspection at the office of the commission in Frankfort[Lexington]; and

2.~~[, Kentucky and transcripts shall be available for]~~ Purchase by~~[interested]~~ parties from the reporter or videographer at rates prescribed for transcripts of evidence or video records in circuit court proceedings in Kentucky, whether ordered transcribed by the commission or not.~~[(22) Regular monthly meetings shall be held by the commission on the first Friday of each month. Where circumstances permit, the commission, after sounding the docket, shall first call up and dispose of all noncontested matters and motions for continuance.]~~

Section 3. Permitting and Spacing of Wildcat Wells. (1) The 10,000 feet from a horizontal wildcat well shall be measured as 10,000 feet from any point along the lateral portion of the wellbore that is located in the productive formation["Wildcat well" means either a deep well drilled with the intent of discovering and producing hydrocarbons from a formation or formations not previously productive of oil or gas from a well within 25,000 feet of its location, or a well drilled under such proven geological conditions that, even though located less than 25,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool].

(a) Proof supporting permitting of a well located less than 10,000[25,000] feet from the nearest deep well previously productive of oil or gas shall[should] be submitted to the director

with the permit application.[:]

(b)[The director may, however, require additional proof.] If a deep well encounters a formation or pool as to which it is not a wildcat well, it **shall[may]** not be produced unless it is otherwise in compliance with the permit requirements and spacing **requirements established in Section 4 of this administrative regulation[regulations]** for other wells in that formation or pool.

(c) The director may~~[-in his discretion,]~~ grant permission to test previously producing formations encountered in the drilling of a wildcat well and **shall establish permit[may fix such]** conditions ~~to[as, in his judgment, will]~~ protect the formation or formations tested and the rights of the operator of any well or wells producing therefrom. If the director grants permission for ~~[such]~~testing, **[he shall inform]**the other members of the commission **shall be informed** in writing of ~~the[his]~~ action.

(d) If an operator files an Application for **Permit, ED-1, incorporated by reference in 805 KAR 1:140[a wildcat well, pursuant to this section]**, which does not meet the spacing provisions of this section, the director shall notify the commission. The commission **shall consider[may hear]** the new application if **the commission[it]** finds, from the new application, that conditions **[may]**warrant an exception to this section.

(2) Within ninety (90) days following the completion of testing by surface production test of a wildcat well shown to be capable of production of oil or gas, or within ninety (90) days of completion as a producible well, whichever occurs first, the operator thereof shall file with the commission a plat showing a proposed unit for the well conforming to the rules **established[provided]** in Section 4(1) of this administrative regulation.[:~~(3) No additional permits will be issued for the pool until a proposed unit plat is filed, and when the plat is filed for a wildcat well or any subsequent wells, no permits shall be issued which will violate the integrity of the proposed unit or the spacing regulations established by Section 4(2) to (4) of this administrative regulation.~~]

Section 4. Drilling and Spacing of Vertical Deep Oil and Gas Wells. (1)**(a)** If a permit is requested for a vertical deep gas well other than a wildcat well or a well drilled on a unit previously formed by the commission, the Application **for Permit, ED-1, incorporated by reference in 805 KAR 1:140**, shall include a plat showing a proposed unit comprising a square with sides of 3,500 feet if the well is to be drilled to a depth less than 7,000 feet and with sides of 5,000 feet if the well is to be drilled to a depth of 7,000 feet or more.

(b) If the permit is for a vertical deep oil well, the proposed unit plat shall comprise a square with sides of 1,750 feet if the well is to be drilled to a depth of less than 7,000 feet and 2,500 feet if the well is to be drilled to a depth of 7,000 feet or more.

(c) The first proposed unit for a pool shall be delineated so that the line forming one (1) side of the square is a base line running from south to north parallel to the Kentucky Coordinate System. All other north-south lines for that proposed unit and any additional units for the same pool shall be drawn parallel to the base line.

(2) Except as **established[provided]** in subsections (4) and (5) of this section, **a[no]** vertical deep gas well drilled to a depth:

(a) Less than 7,000 feet shall **not** be located within 1,072 feet of the boundary of the proposed unit;[:]

(b)[no vertical deep gas well drilled to a depth] Of 7,000 feet or more shall **not** be drilled within 1,532 feet of the boundary of the proposed unit.

(3) Except as **established[provided]** in subsections (4) and (5) of this section, **a[no]** deep oil well drilled to a depth:

(a) Less than 7,000 feet shall **not** be located within 536 feet of the boundary of the proposed unit;[:]

(b)[no deep oil well drilled to a depth] Of 7,000 feet or more shall **not** be drilled within 766 feet of the boundary of the proposed unit.

(4)**(a)** **Pursuant to paragraph (b) of this subsection**, upon receiving evidence showing a necessity~~[therefor]~~, the director **shall[may in his discretion]** grant **a permit in accordance with subparagraphs 1. through 4. of this paragraph. A vertical deep oil well at a depth[permits with the following limitation on well location]**:

1. **[A vertical deep oil well at a depth]**Less than 7,000 feet

shall not[may] be located **[no]**closer than 438 feet to the boundary of the proposed unit;[:]

2. **[A vertical deep oil well at a depth]**Of 7,000 feet or more **shall not[may]** be located **[no]**closer than 625 feet to the boundary of the proposed unit;[:]

3. **[A vertical deep gas well at a depth]**Of less than 7,000 feet **shall not[may]** be located **[no]**closer than 875 feet to the boundary of the proposed unit; **and[:]**

4. **[A vertical deep gas well at a depth]**Of 7,000 feet or more **shall not[may]** be located **[no]**closer than 1,250 feet to the boundary of the proposed unit.

(b) The director shall not grant a permit **pursuant to[under]** the provisions of **paragraph (a) of this subsection[(4)(a) of this section]** except in the presence of evidence **that supports[which reasonably substantiates]** that the proposed location is justified by either topographical or geological conditions. Upon granting **this[such a]** permit, the director shall inform the other members of the commission of his **or her** action in writing.

(c) Prior to the time a certificate of compliance is granted and a well located in accordance with paragraph (a) of this subsection is produced other than for the purpose of testing, the director shall determine **if[whether]** a hearing is necessary for the purpose of taking any special action that may be required to offset any advantage resulting from the location of the well according to the permit and thus protecting correlative rights of others with interests in the pool. If it is determined that special action is necessary, the director shall call a hearing **of the commission**.

(5)**(a)**~~[Exception]~~ **A location that varies[Locations varying]** from the limitations **established[provided]** in subsections (2) to (4) of this section **shall[may]** be granted if the commission determines, after notice and hearing, and the facts clearly support the determination, that a proposed unit or a previously formed unit is partly outside the pool, or, for some other reason, a well located in accordance with the statewide rules could not reasonably be expected to be productive or topographical conditions are such as to make the drilling at such a location unduly burdensome. **A written request[An application]** for an exception location shall be accompanied by a plat drawn to the scale of not smaller than 1:12,000 accurately showing to scale the proposed location of the well according to the Carter Coordinate System and all other deep wells within two (2) locations of the proposed location.**[The application shall be verified by some person acquainted with the facts.]**

(b) If[When] an exception location is sought on the ground of topographical conditions, it **shall be demonstrated[must be shown]** that the commission can effectively offset any advantage to the applicant accruing from ~~the[such]~~ variation.

(c) **If[Whenever]** an exception location is granted, the commission shall take **[such]**concurrent action as **[may be]**required to offset any advantage to the applicant and thus to protect the correlative rights of others with interests in the pool. If the proposed unit or already formed unit is of less acreage than that prescribed by the applicable spacing rule for a regular unit, **if[whether]** proposed or formed according to special field orders for the pool in question, **the[such]** special unit shall be allowed to produce only in the proportion that the acreage content of **the[such]** special unit bears to the acreage content of a regular unit.

(6) **[No portion of]**A proposed unit, **a portion of a proposed unit**, or **a** unit formed by order of the commission upon which a well is located shall **not** be attributed, in whole or in part, to any other drilling or producible well in the same pool.

(7)**(a)****1.** Unless authorization to intentionally deviate and directionally drill **a well** is granted by the commission, every well shall be drilled in such a manner that at any measured depth the actual or apparent location of the well bore shall be within a circle whose center is the surface location and whose radius is equal to the measured depth multiplied by a factor 0.087156.

2. The actual or apparent resultant deviation of the well bore from the vertical shall not be in excess of five (5) degrees at any measured depth.

3. In the event a directional survey indicates that the well bore is outside the above circle at any measured depth, the deviation **shall[must]** be corrected so that drilling **shall[will]** be restored to

the specified limit.

4. Upon completion of a survey ~~indicating[showing or in the presence of knowledge giving rise to a reasonable belief]~~ that a well may be deviated beyond the above prescribed tolerance, the operator shall inform the director.

5.a. ~~If[After]~~ an operator has commenced drilling a well and desires to change the bottom hole location by directionally controlling and intentionally deflecting the well from the vertical, whether more or less than five (5) degrees, unless done to straighten the hole or to sidetrack ~~debris[junk]~~ in the hole or because of other mechanical difficulties, ~~the operator[he]~~ shall first make application for an amended location showing by attached plat the amended projected bottom hole objective and secure an amended permit to drill before commencing ~~[such operations]~~.

b. The amended bottom hole location or objective shall comply with all minimum distances from unit lines as ~~required[prescribed]~~ by all statewide orders or applicable field orders.

(b) In the event a well is to be drilled at a distance from a unit line where ~~the[such]~~ distance is less than the apparent resultant lateral deviation, as determined by multiplying the proposed total depth of the well by the factor 0.087156, a permit to drill ~~shall[will]~~ be issued ~~and[with the understanding that]~~ the operator ~~shall[will]~~ be required to ~~submit to[furnish]~~ the commission ~~[with]~~ inclination or directional survey data as proof that the well ~~shall[will]~~ be completed in compliance with the provisions of this administrative regulation ~~[order]~~ before a certificate of compliance is issued.

1. An inclination survey shall be made on ~~each well[all wells]~~ drilled with the first shot point at a depth not greater than that of the surface casing seat and succeeding shot points not more than 1,000 feet apart.

2. Inclination surveys conforming to ~~this section shall[these requirements may]~~ be made either during the normal course of drilling or after the well has reached total depth.

3. ~~[Such]~~ Survey data shall be certified by the operator's representative or drilling contractor and shall indicate the resultant lateral deviation as the sum of the calculated lateral displacement determined between each inclination survey point, assuming that all ~~[such]~~ displacement occurs in the direction of the nearest unit line.

4. If a directional survey determining the bottom of the hole is filed with the commission upon completion of the well, ~~there shall not be a requirement to submit[it shall not be necessary to furnish]~~ the inclination survey data.

(c) ~~[The commission may, at its discretion, require an operator to conduct inclination or directional surveys under conditions other than those above specified.]~~

~~[d)]~~ An applicant for a hearing to issue special field orders for a new pool or otherwise to establish a drilling unit, or any interested party, may request that the commission pool the interests of the owners and the royalty owners in any unit or units established as a result of the hearing.

1. A request to pool separately owned tracts concurrently with the establishment of a unit or units shall be submitted with the ~~written request[application]~~ for the hearing, or sufficiently in advance to include notice of the request in the notices of hearing.

2. ~~If[When]~~ necessary, the commission ~~shall[may]~~ on its own motion include the pooling of separately owned tracts in the notice of a hearing to establish a unit or units.

3. If separately owned tracts are not pooled as a result of the hearing to establish a unit or units, any interested party may request pooling at any subsequent time.

4. ~~[; provided, however, that]~~ If the owners and royalty owners have not agreed to pool their interests within 120 days of the issuance of a certificate of compliance, the operator of the well shall apply for a hearing to issue a pooling order.

(8) ~~[No]~~ Additional permits for a deep vertical well ~~shall not[will]~~ be issued for the pool until a proposed unit plat is filed. ~~Once[, and when]~~ the plat is filed for a wildcat well or any subsequent wells, ~~[no]~~ additional permits for a deep vertical well shall ~~not~~ be issued ~~if the permits[which]~~ will violate the integrity of the proposed unit or the spacing regulations established by this section.

Section 5. Horizontal Unitization and Pooling for Deep Well Reservoirs. (1) ~~In accordance with[Under]~~ the procedures ~~established[contained]~~ in this section, the commission ~~shall[is authorized to]~~ unitize a productive deep well reservoir for the drilling of deep horizontal wells for the purposes of:

~~(a) Achieving a greater ultimate recovery of oil and gas from the[such] reservoir;~~

~~(b)[,] Preventing waste; and~~

~~(c) Protecting the correlative rights of the owners of oil and gas in the unit.~~

(2) If the Application for Permit, ED-1, incorporated by reference in 805 KAR 1:140, ~~[to permit a single deep horizontal well]~~ has been submitted or well permits have been submitted for multiple horizontal wells to be drilled from a single well pad, the proposed operator of those wells may simultaneously or thereafter apply to create a unit for the coordinated drilling and operation of ~~the[such]~~ well or wells and the allocation of costs and production from the well.

~~(a) A written request[such well. An application]~~ to create ~~[such]~~ a unit ~~[,]~~ shall include:

1. All information required by KRS 353.652 and 805 KAR Chapter 1: ~~[applicable regulations]~~ and

2. A plat of the proposed unit.

~~(b) For a single deep horizontal well, the plat shall also include the:~~

1. Surface location of the proposed well;

2. ~~[, the]~~ Directional path of the lateral portion of the wellbore; ~~[,]~~ and

3. ~~[the]~~ Point of entry into any proposed producing formation.

~~(c) For multiple deep horizontal wells to be drilled from a single well pad, the plat shall show the plan of development for the unit that[which]~~ shall include the:

1. Surface location of each well;

2. ~~[, the]~~ Directional path of the lateral portion of the wellbore; ~~[,]~~ and

3. ~~[the]~~ Point of entry into any proposed producing formation.

~~(d) The plan of development shall be fair, reasonable, [and] equitable, and shall meet all requirements of this section and KRS 353.651 and 353.652.~~

(3) If the director determines the permit requirements for the wells included in the proposed deep horizontal well unit have been met, the director shall notify the commission within five (5) working days of the pending application, and the commission ~~shall[will]~~ set a hearing date for the commission to review and consider the requested unit. ~~The[Such]~~ hearing shall be held ~~[within a reasonable period of time, but]~~ not more than thirty (30) days from the date the director has notified the commission of the pending application.

~~(a) The director shall[will promptly]~~ forward to the commission a complete copy of the applications for the deep horizontal well permits and unit designation and all documents and information filed.

1. ~~[therewith,] If,~~ upon reviewing the ~~written request[application]~~ for the unit, the commission determines that it does not have sufficient data to make the findings required ~~by[under]~~ KRS 353.652, ~~the commission shall[it may]~~ request additional information from the applicant prior to the hearing.

2. If additional information is requested by the commission, the commission ~~shall[will promptly]~~ so notify the operator, and the additional information ~~shall[may]~~ be filed with the commission prior to the hearing or it ~~shall[may]~~ be presented to the commission at the hearing.

~~(b) Upon the request of the operator, and to the extent the commission is legally authorized to do so, the commission shall keep confidential for a period of one (1) year following the date the deep horizontal well is completed, any geological or technical information provided in support of a proposed unit.~~

(4) The commission shall consider the complete application for the proposed deep horizontal well unit based on information and testimony presented by the operator at the hearing that ~~the[such]~~ unit is necessary to prevent waste and to protect correlative rights and that it ~~shall[will]~~ result in the increased recovery of substantially more oil and gas from the reservoir than would otherwise be recovered based upon ~~[, but not necessarily limited]~~

to, the following factors]:

(a) Geological features existing with the proposed unit delineated by the geologically defined limits of the producing reservoir;

(b) Unit size, determined by estimating the likely drainage area for the proposed deep horizontal well[well(s)], considering the well depth, the reservoir pressure, and other geophysical and petrophysical characteristics of the particular formation;

(c) The proposed location or orientation of the proposed deep horizontal well;

(d) The length of the laterals of the proposed deep horizontal well;

(e) The proposed use of multilateral deep horizontal wells, if applicable;

(f) The anticipated principal fluid and anticipated total volume to be used in the well treatment; and

(g) A[~~Any~~] combination of the factors established in paragraphs (a) through (f) of this subsection[thereof].

(5)(a) After notice and hearing, the commission shall determine if ~~the~~:

1.[(a) ~~The~~] Proposed pooling ~~or[and/or]~~ unitization of the reservoir is reasonably calculated to increase the ultimate recovery of oil and gas from the reservoir through the use of horizontal well technology;

2.[(b) ~~The~~] Use of horizontal well technology to drill the proposed deep horizontal wells in the reservoir:

a. Is feasible;

b. [i] Will prevent waste;

c. [i] Will protect correlative rights; and

d. Will with reasonable probability result in the increased recovery of substantially more oil and gas from the reservoir within the unit than would otherwise be recovered; and

3.[(c) ~~The~~] Unitization and the use of horizontal well technology to drill the proposed deep horizontal wells is for the common good and will result in the general advantage of the royalty owners within the unit.

(b) Upon making these findings, the commission shall enter an order approving the creation of the proposed drilling and production unit and providing for the pooled or unitized operation of the deep well reservoir described in the order, all upon terms and conditions [as may be]shown by the evidence to be fair, reasonable, equitable and ~~that shall be[which are]~~ necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and the royalty owners.

(6) The order of the commission creating the unit shall:

(a) Approve the size and shape of the unit;

(b) Approve and adopt the plan of development for the unit, with a copy thereof attached to the order;[i]

(c) Designate the unit operator;

(d) Provide that the unit shall automatically terminate upon the expiration of all the well permits for the proposed deep horizontal wells within the approved unit; and

(e) Provide that, within ninety (90) days of the expiration of the permits for the proposed deep horizontal wells remaining undrilled in the approved plan of development, the designated unit operator ~~shall[must]~~ apply for reformation of the drilling unit to conform the unit size and shape to the actual development that occurred.

(7) From and after the effective date of the order of the commission approving the unit, the interest of each royalty owner and overriding royalty interest owner in the unit shall be [defined as]the percentage of interest owned by such royalty owner or overriding royalty interest owner in each separate tract, multiplied by the proportion that the acreage in each separately owned tract bears to the entire acreage of the unit. The order shall provide for the right of the designated operator of the unit to drill through separately owned tracts that have been pooled voluntarily or by order of the commission within the unit as necessary in order to efficiently develop the pooled or unitized production.

(8) The costs incurred in connection with and the production and proceeds from the wells in the unit shall be allocated to each separate tract in the unit and shall be borne or shared by the working interest owners in each separate tract based upon and determined by the interest of each working interest owner in the tract. For the purpose of this section, any owner or owners of oil

and gas rights in and under an unleased tract of land within the unit, shall be regarded as a royalty interest owner to the extent of the prevailing royalty in and to the rights and a working interest owner to the extent of the remaining interests therein.

Section 6. Certificate of Compliance. Prior to producing oil or gas from a deep well, other than test production for a period not in excess of sixty (60) days, the operator [thereof]shall apply for and obtain a certificate of compliance from the director.

(1) The written request[application] for the certificate of compliance ~~shall[must]~~ be verified, and shall provide information, including an "as-built" plat of ~~each well[the well(s)]~~ in the unit,~~adequate to satisfy the director]~~ that the permitted deep well as proposed in the unit application and plan of development, if applicable, were completed as set forth [therein]or in accordance with the final reformation of the drilling unit approved by the commission.

(2) The director shall issue the certificate of compliance or notify the operator of a decision not to issue the certificate of compliance within fifteen (15) days of receipt of an application[Certificate of Compliance. (1) Prior to production from a deep well, other than test production for a period not in excess of fifteen (15) days, the operator thereof shall apply for and obtain a certificate of compliance from the director. The application, which must be verified, shall disclose information adequate to satisfy the director that:

(a) All working interests in the drilling unit or proposed unit are identically owned, or have been pooled by voluntary agreement or order of the commission, or that the well may be produced without violating the correlative rights of any owner in the unit; and

(b) The operator in the location, drilling, and completion of the well has complied with the conservation laws of the Commonwealth and the rules and administrative regulations established by the Director of the Division of Oil and Gas and the commission applicable thereto.

(2) A certificate of compliance for a well for which a unit has not been established may be conditioned by the director by limiting its duration to a period of not more than 180 days unless a unit has been established and separately owned tracts have been pooled voluntarily or by order of the commission].

Section 7.[6:] Request[Application] for Special Field Orders for Wells. (1) If[When] a new pool is penetrated and a well is proven by surface production test to be capable of producing oil or gas in paying quantities, the operator [thereof]shall, within 120 days after the test is completed or after the well is completed as a producible well, whichever occurs first, or within sixty (60) days of the completion of a confirmation well in the pool, whether drilled by ~~the operator[him]~~ or another operator, ~~request[apply for]~~ a hearing to issue special field orders governing the spacing of wells and establishment of units in the pool.

(2) A written request[An application] for special field orders shall contain a plat showing all wells in the pool affected and the unit or units proposed for the pool.

(3) If upon testing a discovery well ~~[an operator believes that]~~the confirmation well should not or cannot reasonably be located in accordance with the statewide spacing rules, ~~the operator[he]~~ shall proceed by ~~requesting[applying for]~~ a hearing to obtain an exception location.[Section 7. Pooling of Interests in Units Established by Order of the Commission. (1) An applicant for a hearing to issue special field orders for a new pool or otherwise to establish a drilling unit, or any interested party, may request that the commission pool the interests of the owners and the royalty owners in any unit or units established as a result of the hearing. A request to pool separately owned tracts concurrently with the establishment of a unit or units must be submitted with the application for the hearing, or sufficiently in advance to include notice of the request in the notices of hearing. When in its judgment it is necessary, the commission may on its own motion include the pooling of separately owned tracts in the notice of a hearing to establish a unit or units.

(2) If separately owned tracts are not pooled as a result of the hearing to establish a unit or units, any interested party may request pooling at any subsequent time; provided, however, that if

the owners and royalty owners have not agreed to pool their interests within 120 days of the issuance of a certificate of compliance, the operator of the well shall apply for a hearing to issue a pooling order.]

Section 8. Reformation of Drilling Units. (1) Drilling units ~~approved~~[~~formed~~] by the commission may be reformed **only** upon notice and hearing as required by KRS 353.651, to exclude previously included acreage or to include new acreage, or both.

(2)(a) A request for a hearing to reform drilling units ~~shall~~[~~must~~] specify that there:

1. Is new geological ~~data~~;

2. Is new[or] geophysical data; or

3.[~~there~~] Was a change in the proposed drilling of **each well**[~~well(s)~~] in the approved unit and plan of development ~~that~~[~~which~~] will form a basis for the requested reformation and generally describe the source and nature of the data.

(b) A unit shall[Units will] not be reformed in the absence of the[such] data **required by paragraph (a) of this subsection.**

(c)1. New data shall[. Generally, "new data" must] be data not in existence at the time of the hearing, resulting in the formation of the units proposed for reformation.

2. Reinterpretation of data existing at the time of the prior hearing ~~shall~~[~~will~~] not serve as a basis for reformation.

Section 9. Testing of Water Sources near Deep Wells Employing High-Volume Horizontal Fracturing. At least twenty (20) days prior to commencement of the high-volume horizontal fracturing treatment on a horizontal deep well, an owner or operator shall conduct a baseline water quality test of each down-gradient surface water impoundment or water supply[testing] from a groundwater source used for domestic, agricultural, or industrial purposes within 1,000 feet of a deep horizontal wellhead pursuant to **KRS 353.6602**[**2015 Ky. Acts ch. 21, sec. 6(1)**].

(1) The owner or operator shall **submit a notarized**[~~complete an~~] Analysis of Groundwater Source within 1,000 **Feet**[~~ft~~] of Deep High-Volume Horizontal Fracturing Treatment, Form **ED-40**[~~ED-XX~~], identifying the[following]:

(a) Well operator;

(b) Well name and number; Division of Oil and Gas permit number;

(c) Water source to include domestic water well, ponds, springs, and streams;

(d) Water source owner and permanent address;

(e) Distance water source from wellhead; and

(f) Dates of initial baseline and subsequent (after fracturing treatment and well completion) water analysis.

(2) Water well quality testing to establish baseline parameters shall be completed and submitted to the Division of Oil and Gas thirty (30) days prior to hydraulic fracturing pursuant to **KRS 353.6602**.

(3) Laboratory analysis shall be conducted by a certified laboratory pursuant to **KRS 353.6602(2)**[**2015 Ky. Acts ch. 21, sec. 6(2)**].

Section 10. Incorporation by Reference. (1) "Analysis of Groundwater Source within 1,000 **Feet**[~~ft~~] of Deep High-Volume Horizontal Fracturing Treatment", Form ED-40, April 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Oil and Gas, 1025 Capital Center Drive, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at 11 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 provides information necessary for owners and operators to comply with requirements related to drilling deep vertical and deep horizontal wells in the Commonwealth. The administrative regulation also provides information on the functions of the Kentucky Oil and Gas Conservation Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to drilling deep wells in the Commonwealth. The administrative regulation is also necessary to provide information to owners and operators on the operations and involvement of the Kentucky Oil and Gas Conservation Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation complies with those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation provides the necessary details for drilling a deep well in the commonwealth as well as the commission's role in pooling and spacing of those deep wells.

(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 related to comments will address several KRS 13A technical issues. Section 9 was also amended in order to make the administrative regulation match the intent of the authorizing statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the administrative regulation complies with KRS 13A and also ensures compliance with KRS 353.6602.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.6602 requires operators to conduct a baseline water quality test prior to the commencement of a high-volume horizontal fracturing treatment. This amendment alters the administrative regulation in order to ensure compliance with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.6602 requires operators to conduct a baseline water quality test prior to the commencement of a high-volume horizontal fracturing treatment. This administrative regulation will assist in the administration of the statutes by ensuring the operators are clear on how to conduct the required water tests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 oil and gas operators within the Commonwealth. It will also have an impact to the members of the Kentucky Oil and Gas conservation Commission. The commission consists of five (5) members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required to meet requirements of this administrative regulation related to horizontal deep wells including the baseline water testing required by KRS 353.6602.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question

(3): The costs associated with this proposal are difficult to predict as they will depend on the depth at which the well is drilled. The amendments will not add additional costs to the entities listed in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will ensure operators are clear on how to conduct the required water tests.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(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 the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that drill a horizontal deep well will be treated in the same 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? The Division of Oil and Gas and the Kentucky Oil and Gas Conservation Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.565 and 353.6602.

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

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amended After Comments)

805 KAR 1:130.[Deep well][Administrative regulation relating to] Casing, cementing, plugging, gas detection, and blow-out prevention in oil and gas wells.

RELATES TO: KRS 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991

STATUTORY AUTHORITY: KRS[Chapter 13A,] 353.540, 353.550, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of oil or gas[all] wells. This administrative regulation establishes the requirements for the drilling and casing of wells for the purpose of oil or gas extraction[a][deep][well].

Section 1. Definitions.[The definitions in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:] (1)[**"Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.**

(2)[**"Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.**

(2)[(3)] **"Blow-out preventer[(BOP)]" or "BOP" means a device installed on the surface casing, which is the first and largest diameter casing installed in a well with the primary use to make the bore hole stand up and to protect a fresh water zone layer of strata capable of producing or receiving fluids, or installed on the intermediate casing, which is one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous. The device is used[surface or intermediate casing] to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and that[which] is used during drilling operations.**

(3)[(4)] **"Casing[(casing string)]" or "casing string" means steel tubes or pipes installed in a well.**

(4)[(5)] **"Cement" means hydraulic cement [properly]mixed with water or with additives [approved by the director,]and that[which] is used to fill the annulus of casing string[string(s)] or to plug the well.**

(5)[(6)] **"Deep well" is defined by KRS 353.510(16)[means any well drilled and completed below the depth of 4,000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4,000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper].**

(6)[(7)] **"DES" means the state Disaster and Emergency Services Office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.**

(8)[**"Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.**

(8)] **"KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky, with regional offices throughout the Commonwealth.**

(7)[(9)] **"Long casing string" means the last casing installed in a well to be used for production or injection purposes.**

(8)[(10)] **"Shallow well" is defined by KRS 353.510(15).**

(11) **"Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.**

(12)[(11)] **"Zone" means a layer of strata capable of producing or receiving fluids.]**

Section 2. **If an Application for Permit, ED-1, incorporated by reference in 805 KAR 1:140,[When an application] for a shallow well proposed to be drilled to a depth of less than 4,000**

feet or above the base of the lowest member of the Devonian Brown Shale is submitted to the department, the application shall comply with all requirements of 805 KAR 1:020 and shall be exempt from Sections 3 and 4 of this administrative regulation.

Section 3. (1) If an Application for Permit, ED-1, incorporated by reference in 805 KAR 1:140, [When an application] for a [deep] well permit proposed to be drilled below a depth of 4,000 feet or the base of the lowest member of the Devonian Brown Shale, whichever is deeper, is submitted to the department, the operator shall prepare and submit with the permit application a detailed drilling and casing plan on **Casing and Cementing Plan**, Form ED-7, incorporated by reference in 805 KAR 1:140[, Section 7(1)(b)], for the review by and approval or denial of the department pursuant to this administrative regulation.

(2)(a) [This casing and cementing form dated August 1, 1991 is filed and incorporated herein by reference. Copies of this form may be obtained from the Department for Natural Resources, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.] This plan shall include [the following: (a)] [(1)] a drafted schematic showing the hole size and depth of each casing string.

1. The freshwater string shall be set at least thirty (30) feet below the depth in the approved permit.

2. [recommended by the department:] If fresh water is encountered during drilling operations deeper than the depth in the approved permit[such recommended depth], the freshwater casing shall be set at least thirty (30) feet below the actual freshwater depth.

3. A freshwater casing string shall be set and cement circulated to the surface[All freshwater casing strings shall be circulated when they are set] before drilling commences.[: and]

(b) The plan shall also include:-(2) a description of the type, size, and grade of casing to be used and the manner in which the annulus of the casing string and well bore shall[will] be cemented to protect all fresh water, coal, mineral, and oil and gas producing formation in the area proposed for drilling. The volume, class, additives, and weight of the cement to be used shall also be described.

(3) If an open hole[a production] packer assembly is included on the long casing string, the number of packers shall be included on the plan.

(4) If drilling fluid is used, it shall comply with 805 KAR 1:020, Section 2(1)(c).

Section 4. (1)[3-] The operator shall install a blow-out prevention device capable of:

- (a) Closing the top of the well;
- (b) Controlling the release of fluids;
- (c) Permitting pumping into the well; and
- (d) Allowing movement of the inner string of drill pipe.

(2)(a) The device shall be installed on a shallow well[wells] drilled below 4,000 feet or the base of the lowest member of the Devonian Brown Shale, whichever is deeper, capable of withstanding a working pressure of 1,500 psi and a test pressure of 3,000 psi.

(b) The device shall be installed on a deep well[wells] and have a minimum working pressure of 3,500 psi and a test pressure of 5,000 psi.

1. A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation.

2.a. A test shall be performed to ensure the BOP shall operate at its rated capacity:

- (i) When the device is initially installed;
- (ii) Thirty (30) days after the initial installation;
- (iii) When the operator opens or removes the BOP; and
- (iv) [at regular intervals or] At the request of the cabinet.[to ensure the BOP will operate at its rated capacity, and]

The results of the test shall be kept at the well site and made available to cabinet personnel upon request[withstanding a working pressure of 1500 psi and a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and

casing plan required in Section 2 of this administrative regulation. The BOP equipment shall be in place at such time as the well is drilled past the depth at which it becomes a deep well. A test shall be performed at regular intervals to ensure the BOP will operate at its rated capacity, and the results of such test(s) shall be kept at the drill site and made available to department personnel upon request].

Section 5.[4.] The director shall[may] only waive the requirements for a BOP established in Section 4[3] of this administrative regulation for a shallow well[wells] if the operator submits a written request for the[such a] waiver that includes:

- (1) The geologic formations to be drilled through; [and]
- (2) A history of drilling in the vicinity of the proposed well with pressure measurements that show gas pressures were not encountered at [such] levels to require the BOP equipment; and
- (3) The maximum anticipated gas pressure in the proposed well.

Section 6.[5.] (1) The operator shall obtain written instructions from the department prior to plugging the well and the department shall approve or deny the commencement of plugging operations.

(2) Upon the department's request, the operator shall submit:
(a) A well log;
(b)[and] Completion report; and
(c)[and any] Geophysical logs used for preparing plugging instructions.

Section 7.[6-] (1) The department shall be notified verbally within forty-eight (48) hours of any mechanical failure or other deficiency that[difficulty which] may jeopardize the plugging operation or mechanical integrity of the well encountered while conducting any operation or production of a deep well.

(2)(a) [- provided, however,] KYEM[DES] or the department shall be immediately notified if[whenever] there are any well failures or blow-outs that[which] pose the likelihood of imminent environmental damage or danger to the public.

(b) The operator shall correct deficiencies, such as those established in this section,[any and all such difficulties] with due diligence.

Section 8.[7-] An operator in noncompliance with the requirements of this administrative regulation shall be[is] subject to penalties pursuant to KRS 353.991.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at 11 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 the requirements for the drilling and casing of a well.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for drilling and casing a well in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. This administrative regulation establishes the criteria necessary for an owner or operator to meet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The administrative regulation provides details to owners and operators related to drilling and casing a well. This includes information on blow out preventers, requirements to submit the proper forms for casing and cementing,

and pressures wells are to withstand depending on the depth.

(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 related to comments will address several KRS 13A technical issues. The amendments also changed when blow-out preventers are tested and included a clarification regarding production packer assemblies.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary provide clarity to the administrative regulation in two areas.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The amendments provide additional clarity to the administrative regulations regarding blow-out preventers and production packer assemblies.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The amendments assist in the administration of the statutes by clarifying the language in the administrative regulation which was promulgated under the authority of the 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 impact approximately 1,000 oil and gas operators within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will not be required to meet any additional standards. The amendments to this administrative regulation were simply for clarification.

(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 the applicant under these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Operators will benefit by the clarity provided by the amendments to the administrative regulation.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(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 the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that drill a shallow or deep well will be treated in the same 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? The Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 353.550.

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

(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

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amended After Comments)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 353.050, 353.060, 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.610, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991, Chapter 424[353.520, 353.590, 353.610, 353.651, 353.652, 353.991]

STATUTORY AUTHORITY: KRS 353.540, 353.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation establishes[identifies] the requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

Section 1. Definitions. (1) ~~["Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.~~

(2) ~~"Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.~~

(3) ~~]"Blow-out preventer[("BOP)]" or "BOP" means a device installed on the surface casing, which is the first and largest diameter casing installed in a well with the primary use to make the bore hole stand up and to protect a fresh water zone layer of strata capable of producing or receiving fluids, or installed on the intermediate casing, which is one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous. The device is used[or intermediate casing] to prevent the escape of pressure either in the annulus, which is the space between two (2) strings of casing or between a string of casing and the bore hole wall, between casing and drill pipe, or in the open hole without drill pipe, and that[which] is used during drilling operations.~~

~~(2) [(4)] "Casing" is defined by KRS 353.010(3).~~

~~(3) [(5)] "Deep well" is defined by KRS 353.510(16).~~

~~(4) [(6)] "DES" means the State Disaster and Emergency Services Office.~~

~~(7) ["Directional and horizontal drilling" means the science of directing a well bore along a predetermined course to a target located a given distance from the vertical.~~

~~(7) [(8)] "Directional survey" is defined by KRS 353.010(8).~~

~~(5) [(8)] [(9)] ["Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.~~

~~(9) [(10)] "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.~~

~~(6) [(10)] "KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.~~

~~(11) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.~~

~~(12) "Measured depth" means the total depth measured in the well from the surface.~~

~~(13) "Surface casing" means the first and largest diameter casing installed in a well the primary purpose of which is to make the bore hold stand up and to protect the fresh water zones.~~

~~(14) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured. [(15) "Zone" means a layer of strata capable of producing or receiving fluids.]~~

Section 2. Information Submittal. (1) Prior to drilling a directional or horizontal well, the operator shall submit ~~the~~ the following ~~information~~:

(a) An Application for Permit ~~[form]~~ ED 1, for a permit to drill the well, with a cover letter from the operator making a request for drilling the horizontal or directional well;

(b) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to ~~the following requirements~~:

1. The surface location and proposed target formation with their respective ~~["Carter Coordinates"]~~ ["Carter Coordinates"] ~~[-]~~ [-];

2. The proposed course of the well; ~~and~~ and ~~[-]~~ [-];

3. The identification of the intersection length of the proposed well and the proposed producing formation ~~[formation(s)]~~. To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length with regard to the spacing requirements in KRS 353.610 or, for deep wells, 805 KAR 1:100 and KRS 353.651 and 353.652. This distance shall be clearly shown in feet;

(c) A bond as required in KRS 353.590 ~~(7)~~ (5); and

(d) An application fee of \$300.

(2)(a) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat ~~that~~ which shows a vertical cross-section view of the area to be drilled by the well.

(b) This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 7(1)(k).

(c) The cross-section shall include the area from the well site to the target made through the proposed course of the well.

(d) The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for ~~all of the following~~:

1. The kick-off point or selected depth at which the deviation is started;

2. The known coal seams to be intersected;

3. The producing interval;

4. The proposed producing formation; and

5. The proposed target.

(3) ~~Upon~~ When the permit issuance ~~[is issued]~~, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(4) Once the well has been drilled and completed, the following shall be submitted within thirty (30) ~~[ten (10)]~~ days from the date of completion:

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (1)(b)1. through 3. of this section, with the actual course drilled, the kick-off point, and the actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department;

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (2)(d)1 through 5 of this section of this section shall be amended for the actual path of the well, showing the actual formation ~~[formation(s)]~~, coal seams, target, kick-off point; ~~and~~

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey.

1. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well.

2. The survey points shall be made at 200 feet intervals ~~[each tool joint]~~ or at any intervals more frequent ~~[-]~~ and

(d) On Form ED-8, the operator shall record the lateral offset from the well in feet and the true vertical depth for the producing interval and formation and the coal seam intersections and their true vertical depth.

(5) The operator shall satisfy spacing requirements in accordance with KRS 353.610 or, for deep wells, 805 KAR 1:100 and KRS 353.651 and 353.652, of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations.

(6) ~~A coal operator or owner~~ All coal operators or owners affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat established ~~[described]~~ in subsections (1)(b) and (2)(b) of this section of this section as required by KRS 353.050 and 353.060. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection ~~(4)~~ (5) of this section.

(7) The requirements for a deep directional or horizontal well shall satisfy those requirements established ~~[set out]~~ in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held pursuant to KRS Chapter 13B and 805 KAR 1:100 before the Kentucky Oil and Gas Conservation Commission.

Section 3. ~~If~~ When an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on Casing and Cementing Plan, Form ED-7, for the review by and the approval or denial of the department. The items requested in 805 KAR 1:130, Section 3 ~~2~~ (1), (2), and (3) shall be submitted with this plan.

Section 4. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1,500 psi and a test pressure of 3,000 psi.

(1) A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation.

(2) This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 5. The requirements of 805 KAR 1:130, Sections 5, 6, and 7 ~~4, 5 and 6~~ shall also apply to this administrative regulation.

Section 6. An operator in noncompliance with the requirements of this administrative regulation shall be ~~[is]~~ subject to penalties pursuant to KRS 353.991.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Permit ~~[Form]~~, ED 1, June 2004 ~~[March 1990]~~; and

(b) "Casing and Cementing Plan[Form]", ED-7, March 2015~~[August 1991]~~; and

(c) ~~"Operator Certification of Formation Offset and Vertical Depth Form", ED-8, August 1991]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas Conservation, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at 11 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 identifies the requirements for permitting directional and horizontal wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish permitting requirements for directional and horizontal wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation is related to permitting directional and horizontal wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation assist in the administration of the statutes by providing necessary details for owners and operators to obtain permits for drilling directional and horizontal wells.

(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 related to comments will address several KRS 13A technical issues. This administrative regulation was also amended to allow more time to submit required paperwork.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the administrative regulation to correct technical issues pursuant to KRS 13A. The amendment is also necessary allow more time for the submittal of required paperwork.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This amendment is needed to comply with KRS 13A and provide an extended timeframe for the submittal of paperwork.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This amendment will assist in the effective administration of the statutes by continuing to provide for a timeframe for submittal of paperwork.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 oil and gas operators within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will still be required to submit paperwork to the division dealing with the

completion of drilling operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost associated with this amendment. This amendment simply alters the time the paperwork is submitted.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having an extended time to submit information.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(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 the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities that submit an application to drill a directional or horizontal well will submit an ED-7.

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 Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.550.

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

(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

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amended After Comments)

805 KAR 1:170. Content of the operations and reclamation plan[proposal; form on which the proposal is filed].

RELATES TO: KRS 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.595, 353.597, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991[353.520, 353.570, 353.590, 353.5901, 353.595, 353.597]

STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.5901, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan[proposal] applicable to all tracts on which there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. This administrative regulation establishes[specifies] the content of the operations and reclamation plan[proposal], establishes[creates] the form on which that plan[proposal] is to be filed, and establishes[provides for] the form on which well transfers are indicated.

Section 1. Definitions.~~[In addition to those set out in KRS 353.510, the following definitions shall apply to this administrative regulation:]~~ (1) "Best management practices" or "BMPs" is defined by KRS 353.510(28)[353.5901].

(2) ~~["Cross drain" means an open ditch, constructed across the roadway, to carry off road surface water and which is not intended to replace culverts or prohibit vehicular traffic.~~

(3)~~[(2)]["Diversion ditch" means a channel or ridge constructed across a slope for diverting surface runoff.~~

(4)~~[(3)]["Filter strip" means a natural vegetative strip, left undisturbed, between the disturbed construction area and a water course, and which acts as a buffer area to catch sediment before it enters the water course.~~

(5)~~[(4)]~~ "Final reclamation" means the date on which the operator has completed ~~[his]~~drilling operations at the well site, has plugged the well, and has performed all obligations described in the operations and reclamation plan[proposal].

(3)~~[(6)]~~ "Well site boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

Section 2. (1) The operations and reclamation plan[proposal] shall be filed on Operations and Reclamation Plan, Form ED-10, entitled "Operations and Reclamation Plan"~~["Plan to Prevent Erosion of and Sedimentation from a Well Site"]~~.

(2) In addition to the requirements set out in KRS 353.5901, the following information shall be submitted[set out] on Form ED-10:

(a)1. The operator's and surface owner's names, addresses, and telephone numbers;

2.[,] The county in which the well is proposed to be drilled;[,] and

3. The well number;

(b)1. A listing or description of fertilizers and soil amendments and [approved]seed mixes or trees to be planted as established in the table in this subparagraph.

RECOMMENDED HERBACEOUS MIXTURES FOR REVEGETATION	
Note: A species enclosed in parentheses may be substituted for the species to the left. Its seeding rate is enclosed in parentheses.	
Species Mixture	Seeding Rate (Pounds/acre PLS)
Spring - February 15 to May 15	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10

White or Ladino clover	1
Red clover	4
Kobe lespedeza	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)
Red clover	6
4. 31 Tall fescue	20
5. Wheat (Spring oats)	25 (32)
Switchgrass	10
Indiangrass	10
Big bluestem	5
Little bluestem	5
Birdsfoot trefoil	6
Except for mixture 5, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:	
Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2
Summer - May 15 to August 1	
Orchardgrass	10
Kobe lespedeza	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12
Add one (1) of the following quick cover species to the permanent summer seeding mixture:	
Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10
31 Tall fescue	20
Fall - August 1 to October 1	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
Alfalfa (Birdsfoot trefoil)	15 (8)
Red clover	6
3. 31 Tall fescue	20
4. Deertongue	12
Birdsfoot trefoil	8
Red clover	6
Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:	
Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10
Annual ryegrass	5
Mixtures for Wet or Poorly Drained Areas and Pond Borders	
Spring - February 15 to May 15	
Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
31 Tall fescue	20
Common annual lespedeza (quick cover species)	10
Fall - August 1 to October 1	

Redtop	3
Reed canarygrass	15
Alsike clover	6
31 Tall fescue	20
Common annual lespedeza (quick cover species)	10
Mixture for Areas to be Stocked With Woody Plants	
Spring or Fall Seeding	
Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5
If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.	

2. The requirements in subparagraph 1. of this paragraph shall apply for each affected area requiring revegetation treatment~~[and the types and amounts per acre of seed and trees to be planted];~~ and

(c) A detailed map~~[drawing]~~ of the road, well location, and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the ~~[following]~~ requirements **established in subparagraphs 1. through 4. of this paragraph.;**

1. ~~a.~~ The surface owner's tract~~(s)~~ shall be identified on the map~~[drawing]~~, with the name of the surface owner if not listed on the legend.

~~b. The[, which] map[drawing] shall [also] indicate the acreage to be disturbed.;~~

2. The map~~[drawing]~~ may be made over an enlarged section of the United States Geological Survey (USGS) 1:24000 topographic map, or an equivalent format, and shall~~[may]~~ be:

~~a.~~ Enlarged to~~[approximately]~~ 1"=400'; **and**

~~b. [and be]~~ Submitted on a minimum of an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the symbols **established[set-out]** on Form ED-10.;

3. The map~~[drawing]~~ shall have a legend with the operator's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name. Within 500 feet of the permitted wellsite boundary and 100 feet of the well site access road centerline, the map shall show:

~~a.~~ The location of all features listed on the legend of form ED-10;

~~b.~~ All water bodies; and

~~c. If[When] reasonably ascertainable, public utility infrastructure [name and location of all streams, rivers, lakes, outstanding state resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary. The map shall also delineate wetlands that may be affected by the proposed drilling operation].~~

4. The map shall show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed operation.

(3) A signature of the surface owner shall be obtained in instances of a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. Signatory sections for the operator and surface owner shall be completed on Form ED-10 **pursuant to paragraphs (a) and (b) of this subsection.[in the following manner:]**

(a) The name and title, if any, of the operator shall be indicated and his **or her** signature notarized.

1.a. The[, which] signature shall be either that of an officer of the company or of ~~a[some other]~~ person who holds a duly recorded power of attorney to execute documents.

~~b.;~~ A copy of ~~the[which]~~ power of attorney shall be filed with the division.

2. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's. **If someone other than the applicant signs the form, the signatory shall hold a duly recorded power of attorney.[or a power of attorney to execute documents shall be submitted to the division if the signatory is someone other than the applicant;]**

(b) The surface owner's name shall be indicated and his **or her** signature notarized if he **or she** approves of the operations and reclamation ~~plan[proposal]~~, together with any attachments submitted with it.

Section 3. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to **submit[execute]** Form ED-10, the operator shall file:

(1) A written petition for mediation; and

(2) The items established in paragraphs (a) and (b) of this subsection.

[a]., together with the following, at the time the application for permit is filed, in accordance with KRS 353.5901:

(4) A copy of the certified mail receipt verifying that the operations and reclamation ~~plan[proposal]~~, the statement required in KRS 353.5901(4)(b)[353.5901(2)(b)], and the plat were mailed to and received by the surface owner or, if not received, the original or a copy of the unclaimed envelope. A copy of the operations and reclamation ~~plan[proposal]~~ and the attachments enclosed in the envelope mailed to the surface owner shall also be included.

~~b. [(2)]~~ If the surface owner cannot be reached at his last known address of record and certified mail is returned as undeliverable or unknown, the operator shall publish a notice of intended activity, together with a request for information on the whereabouts of the surface owner.

1. The[, which] publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located and once in a newspaper of general circulation.

2. A copy of the notice of intended activity and request for surface owner information shall be included **with the operator's[when the operator files his]** application for permit and shall include:

~~a. [(a)]~~ The name and address of the operator;

~~b. [(b)]~~ A brief description of the intended activity as **established[set-out]** in the operations and reclamation ~~plan[proposal]~~; **and**

~~c. [(c)]~~ **The surface owner must respond to this notice within fifteen (15) days of the second publication in the newspaper; and**

~~d. [(d)]~~ A statement of where interested persons may obtain additional information as to the operator's intended activity.

3. The surface owner shall respond to the notice established in this paragraph.

Section 4. Mediation of Dispute. (1) The surface owner may file with the division a request for mediation ~~[at any time]~~after **receiving[he has received]** from the operator the proposed operations and reclamation ~~plan[proposal]~~, but only after the operator has filed his request for mediation and not later than the time set forth in the Notice of Request for Mediation provided by the department and mailed to the surface owner. The surface owner's request to participate in mediation shall include the mediation fee, in accordance with KRS 353.5901(6), or a request for waiver of the fee.

(2) Contents of a request for fee waiver. The request for waiver of the mediation fee shall include[set forth]:

(a) A brief statement of facts underlying the request for a determination that the individual is financially unable to pay the mediation fee required by KRS 353.5901(6); and

(b)1. Documentation that the individual is receiving or has been deemed eligible to receive public assistance; or

2. An affidavit, subject to penalties for perjury, establishing:

a. [, setting forth] The applicant's individual income;

b. [,] The applicant's household income;

c. [,] Property owned;

d. [,] Outstanding obligations;

e. [,] The number and age of dependents; and

f.[-, and] A copy of his or her most recent Kentucky and federal income tax returns.

(3) Waiver determination.

(a) Within thirty (30) days of filing of the petition, the mediator shall issue a determination accepting or denying the request for fee waiver. If the fee waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the mediator's waiver denial to submit the mediation fee to the department, or the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation and a report shall be issued pursuant to subsection (4) of this section.

(b) The mediator's waiver determination shall not be[is not] subject to appeal.

(c) In considering the request for fee waiver, the mediator shall consider the statement and affidavit submitted by the surface owner and consult the Federal Poverty Guidelines in effect upon[at the time] the date the request is mailed.

(d) The mediator shall waive the mediation fee for any surface owner whose household income is at or below 100 percent of the Federal Poverty Guidelines.

(e) The mediator shall[has the discretion to] waive the mediation fee for any surface owner whose household income exceeds 100 percent of the Federal Poverty Guidelines if the mediator determines that the surface owner has demonstrated financial inability to pay the fee.

(f) It shall[It may] be presumed that the surface owner has the financial ability to pay the mediation fee if that person:

1. Is not receiving, or is not eligible to receive, public assistance payments upon the date[at the time] the affidavit is submitted; or

2. Owns more than one (1) motor vehicle[353.5904(2)(b)].

(4)[(2)] If the surface owner does not file the[his] mediation fee within the time and in the manner required in the Notice of Request for Mediation, the surface owner[he] shall be deemed to have failed to satisfy the statutory requirements applicable to mediation.[-] The mediator shall file a report noting the failure and recommend the acceptance of the operator's operations and reclamation plan[proposal].

(5)(a)[(3)] The mediator shall not settle damage claims or make any determinations regarding damage claims[them] in the[his] report.

(b)[However,] Information presented by the operator or surface owner as to costs incurred by either party as a result of the projected drilling and the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits, or other construction and reclamation activities in a manner that[which] has the least adverse surface impact.

(6)[(4)] If the operator withdraws his or her application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 5. Construction, Reclamation, and Maintenance. (1) Pre-construction planning shall be performed to design access roads, wellsite, and pits along existing topography to minimize erosion and identify locations for sediment control practices and devices in accordance with the operations and reclamation plan.

(2) Construction activities shall incorporate BMPs[best management practices] for erosion and sedimentation control on all disturbed areas.

(a) All cuts and fills shall have side slopes that are stable for the soil or fill material utilized.

(b) A wellsite[Wellsites] shall be constructed on a stable base.

(c) If[Where] practicable, pits shall be constructed in solid ground on the cut or highwall side of the wellsites, and in accordance with 401 KAR 5:090, Section 9(5)(a).

1. A disturbed area(a) All disturbed areas] shall be graded and stabilized so that soil erosion, surface disturbances, and stream sedimentation is minimized utilizing best management practices, in accordance with the approved operations and reclamation plan.

2. If(b) Where] practicable, all topsoil present in the area to be

disturbed shall be removed and segregated for redistribution during reclamation.

3.(c) Temporary erosion control measures shall be implemented during construction of the road to minimize sedimentation and erosion until permanent control measures including seeded and mulched road ditches can be established.

(3)[(1) The construction of the well site, including roads, pits, tanks, lines and other areas disturbed, shall be performed by the operator in accordance with the operations and reclamation proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved. The vertical grades shall be as low as reasonably practicable and compatible with topography.

(2) If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in a manner as to:

1. Allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes; and

2.[-, and] Provide that maintenance shall be in accordance with the operations and reclamation plan[proposal];

(b)1. Establish drainage to adequately accept runoff from access roads, the well site, and other areas in a manner that shall prevent[which prevents] unreasonable interference with the surface owner's property, roads, farming operations, and buildings; and

2.[-, and] Establish [that]drainage in accordance with the operations and reclamation plan[proposal]; and

(c) Repair access roads, the well site area, and pits damaged by events as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred.[-; however,] The operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction, or operation of the well by the operator.

Section 6. Site closure. (1) The department shall consider a wellsite closed after:

(a) All surface production facilities have been removed;

(b) The well has been plugged under direction of the department;[and]

(c) Written notice has been provided by the operator to the division that final reclamation and site closure has been completed and the reclamation work pursuant to the operations and reclamation plan; and

(d) The cabinet has verified that the reclamation work complies with the operations and reclamation plan in the approved permit package[has been approved by the cabinet][the operator shall provide written notice to the division when final reclamation and plugging have been completed].

(2) The bond required in KRS 353.590(5) shall not be released until a division inspector has:

(a) Made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging; and

(b)[and has] Filed a report to the director documenting that the following have occurred:

1.(a) All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material;

2.(b) A diverse and effective permanent vegetative cover has been established; and

3.(c) Any matters relating to settlement, inadequate vegetative cover, or erosion have been corrected.

Section 7. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a well [located on a severed minerals tract and]for which an approved operations and reclamation plan[proposal] is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before signing [Form ED-13,"]Well Transfer Form ED-13["];

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well

and related surface disturbance;

(c) Secure from the successor operator a letter indicating that the operator[he] has received from the transferring operator a copy of Form ED-10 and that he or she is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;

(d) Submit to the division the completed[executed] Form ED-13, applicable fee, and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner established[set forth] on Form ED-10; and

(e) Provide the surface owner of record with a copy of form ED-13 upon submission[when he submits it] to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied and shall advise the transferring and successor operators in writing upon transfer of[when] the well[is transferred].

(3)(a) The transferee of a well shall assume all obligations in accordance with[under] the terms of the permit and this section upon transfer regardless of whether the transferor commenced the activity and regardless of whether the transferor failed to properly perform the transferor's obligations in accordance with[under] the permit and this chapter. The transfer of the permit shall relieve the transferor of any future obligations under the terms of the permit or 805 KAR Chapter 1[this chapter], but shall not relieve the transferor of any civil penalties that arose from violations occurring prior to the transfer.

Section 8. (1) If a well is to be drilled and completed on federal lands, the director shall accept a copy of a surface use reclamation agreement between the well operator and the federal agency in lieu of the operations and reclamation plan[proposal].

(2) If the operator elects to submit this agreement, it shall be submitted with[at the time of filing] the application for permit to drill a well.

Section 9. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation plan[proposal] or the requirements of Section 6 of this administrative regulation, a written notice of violation describing the noncompliance shall be given to the operator, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation shall allow the operator up to forty-five (45) days to correct the violation.

(3) An operator may file for an extension of time to correct a violation. A request for an extension of time shall be submitted via[by submitting] a letter to the director describing the need for that extension.[:] If the director concludes that the reasons for the request are beyond the operator's control[request is reasonable] and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, the director shall[he may] grant the request for extension of time.

(4) The operator's bond shall[may] be forfeited to the department's oil and gas well plugging fund, pursuant to KRS 353.590(10)[353.590(7)], if the operator[he] fails to make required corrections.

(5) An operator who, after hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, shall be[is] subject to the penalties described in KRS 353.991.

Section 10. Incorporation[Material Incorporated] by Reference.

(1) The following material is incorporated by reference:

(a) "Operations and Reclamation Plan", ED-10, April 2015[Form ED-10, "Plan to Prevent Erosion of and Sedimentation from a Well Site", (February 14, 1997 Edition), Division of Oil and Gas]; and

(b) Form ED-13, "Well Transfer", [(April 16, 1990 edition)], Division of Oil and Gas.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas[These forms may be obtained from, examined, or copied at the Kentucky Department for Natural Resources], 1025 Capital

Center Drive, [Suite 201, P.O. Box 2244,] Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at 11 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, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the content of the operations and reclamation plan and provides necessary forms to complete the requirements of the administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish reclamation requirements for well sites within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This administrative regulation provides the necessary detail for an operations and reclamation plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan and requires the owner or operator to complete the provisions of that plan. This administrative regulation assists in the administration of the statutes by providing necessary details for owners and operators to submit an operations and reclamation plan as well as complete reclamation on their well sites.

(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 is necessary to address several KRS 13A technical issues. The administrative regulation was also amended in order to introduce a list of approved seed mixes for reclamation purposes that includes Kentucky 31 Tall Fescue.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the administrative regulation to correct technical issues pursuant to KRS 13A. The amendment is also necessary to provide clarity to the appropriate seed mixes for reclamation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. An accepted seed mix is part of an operations and reclamation plan.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This amendment will assist in the administration of the statutes by providing a defined list of approved seed mixes an operator can use to complete the required operations and reclamations plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 active operators within the Commonwealth. The proposal will also impact the surface and property owners which will be dependent on the number of wells permitted. There are approximately 900 permits issued each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required

provide will now be required to select a seed mix from the approved list introduced by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on the seed mix selected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having a defined seed mix list to refer to when preparing the required operation and reclamation plan.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(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 the proposed amendments.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

(9) TIERING: Is tiering applied? No. All entities are required to submit an operation and reclamation plan and will select a seed mix from the approved list.

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 Oil and Gas and Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.5901.

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amended After Comments)

907 KAR 10:830. Acute care inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4, Pub.L. 111-148

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), 205.641(2), 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS website of <http://www.cms.hhs.gov> which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906 KAR 1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG. The geometric mean is calculated by taking the nth (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of

a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Hospital-acquired condition" means a condition:

(a) Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; and

(b) Which is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(20) "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents, which are not reimbursed through direct graduate medical education payments.

(21) "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(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.

(23) "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(24) "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25) "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(26) "Medical education costs" means direct and allowable costs that are:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for Medicare and Medicaid Services.

(29) **"Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:**

(a) Published annually by the Centers for Medicare and Medicaid Services; and

(b) Located online at the Centers for Medicare and Medicaid Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

(30) "Medicare operating and capital cost-to-charge ratios" means two (2) hospital-specific calculations;

(a) Completed by Medicare using CMS 2552 cost report information;

(b) In which:

1. Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; and

2. Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; and

(c) That[- These ratios] are published annually by CMS in an impact file released with the Medicare IPPS Final Rule Data Files and Tables for a given federal fiscal year.

(31) [(30)] "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by

Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(32) [(31)] "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(33) [(32)] "Pediatric teaching hospital" is defined in KRS 205.565(1).

(34) [(33)] "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital;

(d) Psychiatric, substance use disorder, or rehabilitation services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

(35) [(34)] "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(36) [(35)] "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(37) [(36)] "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(38) [(37)] "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

(39) [(38)] "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(40) [(39)] "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

(41) [(40)] "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

(42) [(41)] "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(43) [(42)] "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(44) [(43)] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

(45) [(44)] "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(46) [(45)] "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(47) [(46)] "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR

10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;
2. A Medicare end stage renal disease payment;
3. A Medicare new technology add-on payment;
4. A Medicare routine pass-through payment;
5. A Medicare ancillary pass-through payment;
6. A Medicare value-based purchasing payment or penalty;
7. A Medicare readmission penalty in accordance with

paragraph (c) of this subsection;

8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;

9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or

10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

1. A DRG base payment; and
2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 upon adoption of this administrative regulation.

2. The grouper version shall be updated in accordance with Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7 of this paragraph.

3. Upon adoption of this administrative regulation, the hospital-specific operating rate referenced in subparagraph 1 of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data **Files and Tables** published by CMS as described in subparagraphs 4 through 6 of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4 of this paragraph

shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. Upon adoption of this administrative regulation, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule **Data Files and Tables[impact file]** published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6 of this paragraph.

3. Upon adoption of this administrative regulation, the hospital-specific capital rate referenced in subparagraph 1 of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data **Files and Tables** published by CMS as described in subparagraphs 4 and 5 of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. Upon adoption of this administrative regulation, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule **Data Files and Tables[impact file]** published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. Effective October 1, 2015, a Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule **Data Files and Tables[impact file]** published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. Upon adoption of this administrative regulation, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) Effective October 1, 2015, the department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data **Files and Tables** corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping

software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the full DRG base payment and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;
2. A cancer or children's hospital;
3. A home health agency;
4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;
5. A long-term acute care hospital; or
6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(C)(i).

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2 of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c)1. of this section.

(10) The department shall reimburse a receiving hospital for a

transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

a. Include a cost settlement process based on the Medicare 2552 cost report form; and

b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

- (i) Kidney Acquisition - \$65,000;
- (ii) Liver Acquisition - \$55,000;
- (iii) Heart Acquisition - \$70,000;
- (iv) Lung Acquisition - \$65,000; or
- (v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

- (a) A recipient;
- (b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or
- (c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) On October 1, 2015, the HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables[impact file].

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals. (1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) On October 1, 2015, the HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables[impact file].

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in paragraph (a) of this subsection is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, pursuant to federal regulation or law, the department shall not reimburse for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual payment amount for a hospital as established in subparagraphs 1 through 4 of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1 of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2 of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual payment amount.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually, effective October 1, update the

Medicare grouper software to the most current version used by the Medicare program.

(b) If Medicare does not release a new grouper version effective October 1, the current grouper effective prior to October 1 shall remain in effect until a new grouper is released.

(2) At the time of the grouper update referenced in subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data Files and Tables[and impact file] shall be updated to reflect the most current Medicare IPPS final rule in effect.

(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.

2. The notice referenced in subparagraph 1 of this paragraph shall request that the hospital:

a. Review the information; and

b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30 of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;
2. An electronic cost report file (ECR);
3. The Supplemental Medicaid Schedule KMAP-1;
4. The Supplemental Medicaid Schedule KMAP-4; and
5. The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(c) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

- (a) A cost associated with a political contribution;
- (b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and
- (c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1 and 2 of this paragraph.
 - 1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.
 - 2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.
- (2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.
- (3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

- (a) A children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and
- (b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

- 1. Sole community hospitals pursuant to Section 5 of this administrative regulation; or
- 2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

- 1. Medicare indirect medical education cost or reimbursement;
- 2. Organ acquisition cost settlements;
- 3. Disproportionate share hospital distributions; and

4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year

settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted costs remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule **Data Files and Tables** inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use for the in-state acute care hospital the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments

made for sole community hospitals or Medicare dependent hospitals.

(2) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership. ~~[(3) If two (2) or more separate entities merge into one (1) organization, the department shall:~~

~~(a) Merge the latest available data used for rate setting;~~

~~(b) Combine bed utilization statistics, creating a new occupancy ratio;~~

~~(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;~~

~~(d) If one (1) of the facilities merging has disproportionate share hospital status and the other does not, retain for the merged facility the status of the facility which reported the highest number of Medicaid days paid; and~~

~~(e) Require each provider to submit a cost report for the period:~~

~~1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and~~

~~2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 10 of this administrative regulation.]~~

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. 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 10:012; and

(2) This administrative regulation.

Section 20. 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 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section of this administrative regulation.

(2)(a) A request for a review of an appealable issue shall be received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and

2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

1. Not review the request; and

2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope of this section, by sending a request for an administrative hearing

to the Division for Administrative Hearings (DAH) within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Division for Administrative Hearings (DAH) the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort, Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the DAH.

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

1. A mutual agreement by the provider and the department; or
2. A continuance granted by the hearing officer.

(f)1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or
2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

1. Preside over the hearing; and
2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l)1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m)1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

Section 23. Effective Date. This administrative regulation shall become effective on October 1, 2015.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Supplemental Medicaid Schedule KMAP-1"; 2013;
- (b) "Supplemental Medicaid Schedule KMAP-4"; 2013;
- (c) "Supplemental Medicaid Schedule KMAP-6"; 2013; and
- (d) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

(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 40621, Monday through Friday, 8 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>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse in the same manner as DMS for services provided by an inpatient acute care hospital. This new administrative regulation introduces a new reimbursement model in which DMS's reimbursement shall equate to ninety-five (95) percent of each hospital's Medicare reimbursement excluding certain reimbursement components recognized by Medicare. The excluded components include a Medicare low-volume hospital payment, a Medicare end stage renal disease payment, a Medicare new technology add-on payment, a Medicare routine pass-through payment, a Medicare ancillary pass-through payment, a Medicare value-based purchasing payment or penalty, a Medicare readmission penalty, a Medicare hospital-acquired condition penalty, any type of Medicare payment implemented by Medicare after October 1, 2015, or any type of Medicare payment not described in this administrative regulation. Previously, DMS reimbursed for such care based on a unique diagnosis-related group (DRG) model utilized by DMS.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization. The new reimbursement model is necessary as DMS's current model – a DRG model – is incompatible with the new version of International Statistical Classification of Diseases and Related Health Problems (ICD) systems known as ICD-10. ICD-10 becomes effective on October 1, 2015 and DMS shall be unable to pay for acute care hospital claims effective October 1, 2015 unless it adopts a reimbursement model that is compatible with ICD-10. The Medicare Program reimbursement model for acute care inpatient hospitals is compatible with ICD-10 and is also a model with which Kentucky hospitals are familiar as they provide care to Medicare recipients.

(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 reimbursement model for care provided by inpatient acute care hospitals to Medicaid that will be able to pay claims following international adoption of ICD-10.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid that will be able to pay claims following international adoption of ICD-10.

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

(a) How the amendment shall change this existing administrative regulation: Amendments include defining "Medicare IPPS Final Rule Data Files and Tables"; reformatting the definition of "Medicare operating and capital cost-to-charge ratios"; inserting a requirement that DMS send notice to each hospital, within thirty (30) days of the Centers for Medicare and Medicaid Services publishing of the Medicare IPPS Final Rule Data Files and Tables, containing the hospital's data that will be used by DMS to establish diagnosis related group rates for the hospital on October 1 as well as requesting that the hospital review the data and notify DMS

(prior to October 1) if the data published by CMS does not match the data in the notice sent to the hospital by DMS; removing provisions regarding merged entities; and establishing that if no applicable rate information on the Medicare IPPS Final Rule Data Files and Tables exist for an in-state hospital then DMS will use the in-state average for the operating rate, capital rate, and outlier cost-to-charge ratio (excluding any sole community hospital or Medicare dependent hospital adjustment).

(b) The necessity of the amendment to this administrative regulation: The definition-related amendments are necessary for clarity and to ensure compliance with KRS Chapter 13A formatting requirements; the amendment regarding notifying hospitals of Medicare IPPS final rule data is necessary to solicit input from each hospital regarding the accuracy of the data. The merged entity provisions that are being deleted are no longer applicable. Establishing that DMS will use the in-state acute care hospital average for certain rate components if no applicable rate information exists for the given hospital on the Medicare IPPS Final Rule Data Files and Tables if necessary to establish the rates that will be used in this circumstance.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by clarifying provisions and inserting provisions where none existed but are needed.

(d) How the amendment shall assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying provisions and inserting provisions where none existed but are needed.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Hospitals will continue to need to annually submit cost report related documents to DMS.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Acute care inpatient hospitals will benefit from being able to be reimbursed for hospital care following implementation of ICD-10 and from receiving an additional \$2 million in the aggregate reimbursement pool for care to Medicaid fee-for-service recipients.

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

(a) Initially: DMS estimates that implementing the administrative regulation will increase DMS expenditures by \$1.5 million (\$1.05 million federal funds and \$0.45 million state funds) for the state fiscal year ending June 30, 2016 and by another \$0.5 million (\$0.35 million federal funds and \$0.15 million in state funds) for the first three (3) months of the subsequent state fiscal year.

(b) On a continuing basis: DMS estimates that the expenditure increase described in paragraph (a) will plateau for future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding shall 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 shall be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.205.

2. State compliance standards. KRS 205.520(3) states, "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. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 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." 42 C.F.R. 447.205 mandates that the state provide public notice of reimbursement changes.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), and 42 U.S.C. 1396a(a)(30).

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 shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue above the current revenue level being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue above the current revenue level being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much shall it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much shall it cost to administer this program for subsequent years? The amendment does not result in additional

costs to the Department for Medicaid Services 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:

PROPOSED AMENDMENTS

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 2:020. Occupation-based career and technical education certification.

RELATES TO: KRS 156.095, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The certificates for occupation-based career and technical education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers employed by the public schools, ~~the Office of Career and Technical Education of the Department of Workforce Investment,~~ the Kentucky Community and Technical College System, or the Kentucky Department of Education Office of Career and Technical Education.

(2) The certificates may be issued for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the required Kentucky Academic Standards~~[Kentucky Program of Studies]~~ established in 704 KAR 3:303.

(3) Certificates for occupation-based career and technical education established in this administrative regulation:

(a) Shall be initially issued to teacher candidates who are employed based upon required occupational experience in the subject area to be taught; and

(b) Shall not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial issuance. A provisional internship certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued to an applicant who has submitted a completed CA-3 for a duration period of one (1) year upon completion of the following requirements:

(a) A minimum of a high school diploma~~[High school graduation]~~ or its equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center;

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, with:

1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited occupational~~[vocational]~~ preparation program for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education Office of Career and Technical Education~~[the Department of Workforce Investment, or the Kentucky Community and Technical College System];~~

(c) The testing provisions established in 16 KAR 6:020; ~~and~~

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

(e) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment, or the Kentucky Community and Technical College System.

(2) First renewal of one (1) year provisional certificates. The first renewal of the one (1) year provisional certificate shall require the successful completion of:

(a) The Kentucky Teacher Internship Program established in 16 KAR 7:010; and

(b) Three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Kentucky Department of Education Office of Career and Technical Education~~[Department of Workforce Investment]~~.

(3) Subsequent renewal of one (1) year provisional certificate. Any subsequent renewal of the one (1) year provisional certificate to an applicant who has submitted a completed CA-3 after the successful completion of the internship shall require:

(a) The completion of a minimum of six (6) semester hours of college credit for each renewal selected from the sixty-four (64) semester hour planned program for the preparation of teachers in information technology, industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and

(b) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070.

(4) Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements.

(5) The one (1) year provisional certificate shall be limited to nine (9) one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.

(6) Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:

(a) Receive the professional certificate established in Section 3 of this administrative regulation; and

(b) Adhere to the subsequent renewal requirements established in Section 3(3) of this administrative regulation.

Section 3. Issuance and Renewal of the Professional Certificate. (1) Initial issuance. A professional certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year to an applicant who has submitted a completed CA-3 upon completion of the following requirements:

(a) Compliance with Section 2(1) of this administrative regulation; and

(b) The completion of a planned program consisting of a minimum of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.

(2) First renewal.

(a) The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010.

(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.

(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:

(a) Three (3) years of teaching or occupational experience in the occupational specialty; or

(b) Six (6) semester hours of college credit related to the certification area.

Section 4. The planned program for occupation-based career and technical education teachers shall:

(1) Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity;

(2) Utilize the proficiency evaluation established in 16 KAR 5:030;

(3) Be based upon the experienced teacher standards established in 16 KAR 1:010;

(4) Meet the specialty program association standards established in 16 KAR 5:010; and

(5) Be accredited by the Education Professional Standards Board using the applicable standards and procedures established in 16 KAR 5:010.

Section 5. Information Technology Teachers. (1) A teacher shall possess one (1) of the following credentials to instruct in the field of information technology:

(a) Provisional certificate established in Section 2 of this administrative regulation;

(b) Professional certificate established in Section 3 of this administrative regulation;

(c) Computer information systems certificate established in 16 KAR 2:010;

(d) Computer science endorsement established in 16 KAR 2:010; or

(e) Instructional computer technology endorsement established in 16 KAR 2:010.

(2) If a qualified teacher is not available for the position of information technology teacher, as attested to by the local school superintendent or the Associate Commissioner of the Kentucky Department of Education Office of Career and Technical Education [Department of Workforce Investment], a one (1) year probationary certificate may be issued under the requirements established in 16 KAR 2:190.

Section 6. Incorporation by Reference. (1) "CA-3," 06/13, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: June 8, 2015

FILED WITH LRC: June 15, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 31, 2015 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 July 31, 2015. 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: Jimmy Adams, Acting Executive Director, 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: Jimmy Adams

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for occupation-based career and technical education certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for occupation-based career and technical education and establishes the procedures by which an applicant may apply for teaching certification in career and technical education areas.

(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 requires applicants for career and technical education certification to use Form CA-3. The CA-3 contains character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires initial certification applicants to submit a national and state background check with their applications. Additionally, amendment updates references to the Kentucky Department of Education Office of Career and Technical Education and corrects outdated or incorrect language in the regulation.

(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 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(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 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: 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. School districts and students will not have to take any actions to comply with 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 may be an additional cost to applicants to obtain the required background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and 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 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 161.1221(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 qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 4:030. Out-of-state educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.124, 161.126

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to

establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the certification provisions for applicants with out-of-state educator preparation.

Section 1. Definition. "Out-of-state educator preparation provider" means an educator preparation provider located outside of the Commonwealth of Kentucky or an online educator preparation provider not subject to the licensing requirements of 13 KAR 1:020 that is not accredited by the Education Professional Standards Board.

Section 2.(1) An applicant for Kentucky teacher or administrative certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] shall have completed a program of preparation and the curriculum requirements approved by the responsible state education agency for teacher or administrative certification.

(2) An applicant for Kentucky teacher or administrative certification who completes an out-of-state educator preparation program through a solely online out-of-state educator preparation provider shall have completed a program of preparation that is accredited or approved, as applicable, by the provider's state of origin, regionally accredited, and accredited by the Council for Accreditation of Educator Preparation (CAEP) and the curriculum requirements approved by the responsible state education agency for teacher or administrative certification.

Section 3.[2.] Teacher Certification. (1) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] shall:

(a) Possess a teacher license or certificate equivalent to the Kentucky statement of eligibility from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point requirements established in 16 KAR 2:010;

(c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program and not based on the completion of a written or verbal assessment; and

(d) Follow the procedures for certificate application established in 16 KAR 2:010.

(2) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] and who meets the requirements of Section 2[4] of this administrative regulation and subsection (1) of this section shall be issued a Kentucky teaching certificate or statement of eligibility established in 16 KAR 2:010 at the grade range and content area corresponding to the out-of-state preparation.

(3)(a) Beginning July 1, 2016, in addition to any other certification renewal requirements, an applicant for Kentucky teacher middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall, within five (5) years of receiving certification, complete the following:

1. A three (3) hour content literacy course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction; or

2. Two (2) or more courses aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction.

(b) The course or courses submitted by an applicant for Kentucky teacher middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall meet the following requirements:

1. The course or courses shall ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

2. The syllabus for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

3. The assessments, including any scoring instruments, developed for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate's competency to provide classroom instruction aligned to each standard; and

4. The faculty assigned to teach each course aligned to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher shall be qualified to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

Section 4.[3.] Administrative Certification. (1) An applicant for Kentucky administrative certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] shall:

(a) Possess an administrative license or certificate equivalent to the Kentucky corresponding statement of eligibility or administrative certificate from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point requirements for the administrative certificate established in 16 KAR Chapter 3;

(c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program consisting of a minimum of thirty (30) post Masters' graduate-level hours in school administration; and

(d) Follow the procedures for certificate application established in 16 KAR Chapter 3.

(2) An applicant for Kentucky administrative certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] and who meets the requirements of Section 2[4] of this administrative regulation and subsection (1) of this section shall be issued a Kentucky administrative certificate or statement of eligibility established in 16 KAR Chapter 3 corresponding to the out-of-state preparation.

(3) An applicant for Kentucky principal certification who was admitted to a principal preparation program located outside the Commonwealth of Kentucky prior to January 1, 2012 and who completes the program prior to January 31, 2014 shall be exempt from subsection (1)(c) of this section.

Section 5.[4.] (1) An out-of-state applicant shall be subject to the testing and internship requirements of KRS Chapter 161 and implementing administrative regulations of the Education Professional Standard Board in KAR Title 16.

(2) An out-of-state applicant shall be subject to the certificate issuance, recency, reissuance, renewal, and rank change provisions of KRS Chapter 161 and KAR Title 16.

Section 6. Incorporation by Reference. (1) "The Standards for Reading Professionals – Revised 2010", 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: June 8, 2015

FILED WITH LRC: June 15, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 31, 2015 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 the end of the calendar day (11:59 p.m.) on July 31, 2015. 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: Jimmy Adams, Acting Executive Director, 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: Jimmy Adams

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification provisions for applicants with out-of-state preparation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to out of state applicants for educator certification on the Kentucky requirements for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation states the requirements for applicants who were prepared out of state or who are certified by another state to get a Kentucky teacher or administrative certificate.

(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 specifically defines what is an out-of-state preparation provider and establishes the minimum accreditation requirements from the state of origin for an out-of-state preparation provider. Additionally, the regulation establishes the requirement that an applicant from an out-of-state preparation provider take a content literacy course within five (5) years of initial certification in Kentucky beginning July 1, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly delineate what out-of-state educator preparation provider degrees will be accepted for Kentucky certification. Additionally, applicants for Kentucky certification from out-of-state preparation need to be aware that they may need to take additional courses in content literacy prior to renewal of their Kentucky teaching certifications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the regulation by adding a definition for an out-of-state educator preparation provider. This amendment also includes language

currently found in 16 KAR 5:010 regarding solely online out-of-state educator preparation providers in order to ensure that an applicant prepared by a provider not accredited by the Education Professional Standards Board will have notice of what providers are accepted in Kentucky. This amendment also ensures that an out-of-state prepared applicant will have the same training in content literacy as applicants prepared in Kentucky. Kentucky prepared teachers will be required to take a content literacy course pursuant to 16 KAR 5:060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, twenty-eight (28) educator preparation programs, and educators seeking new teacher and administrative certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts and educator preparation institutions will not have to take any measures to comply with this amendment. Applicants from out-of-state preparation providers will need to refer to the regulation to ensure their preparation will be sufficient for Kentucky certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, 173 school districts, eight (8) public universities with educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030

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

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

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

(c) How much will it cost to administer this program for the first year? There may be a minimal cost to the Education Professional Standards Board to update its website and ensure that applicants have notice of the new requirements.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This regulatory amendment establishes the requirements for Kentucky certification. It does not have any fiscal impact.

PERSONNEL CABINET (Amendment)

101 KAR 2:020. Job classification plan.

RELATES TO: KRS 18A.005, 18A.030(2), 18A.032, 18A.110(1)(c), (7)

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(c) and (7) requires the Secretary of Personnel to promulgate administrative regulations, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for, and the same schedule of pay equitably applied to, all positions in the same job classification. This administrative regulation establishes the classification plan for classified service.

Section 1. Interpretation of Job Class Specifications. (1) Job class specifications shall describe and explain the job duties and responsibilities typically assigned to a position within a particular job classification[class].

(2) Job class specifications shall indicate the kinds of positions to be allocated to the various job classifications as determined by their characteristics and duties or responsibilities. Characteristics and duties or responsibilities of a job classification[class] shall be general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities of a job classification shall not be construed as:

(a) Describing what the duties or responsibilities of a[an individual] position shall be; or

(b) Limiting the appointing authority's ability to assign[temporarily take away from, add to,] or[otherwise] alter the duties and responsibilities of a[an individual] position.

(4) The use of examples[an individual expression or illustration] describing the duties or responsibilities of a job classification[class] shall not be regarded as excluding assignment of other duties or responsibilities not mentioned which are of similar kind or quality.

(5) Job class specifications shall establish the minimum requirements, which are comprehensive statements of the minimum background as to education, experience, and other qualifications required for the job classification[Minimum requirements shall be comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly].

(6) The job class specification may contain special requirements, additional requirements, unique physical requirements, or typical working conditions[Position descriptions shall state, in detail, the duties and responsibilities assigned to an individual position. If the duties and responsibilities assigned to a position are to be changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the

~~appointing authority for the agency a position description, stating the duties and responsibilities to be assigned. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the secretary with the appointing authority's recommendation for reclassification].~~

Section 2. Official Copy of Job Class Specifications. (1) The Personnel Cabinet shall maintain a master set of all approved job class specifications. These specifications shall constitute the official job class specifications in the job classification plan. The copies of the specification for each job classification shall indicate the date of establishment~~[adoption]~~ or the last revision of the specification.

~~(2) The Personnel Cabinet shall make available job class specifications in an electronic format~~[provide each appointing authority with a set of class specifications. Class specifications shall be available for inspection by an employee or the public under reasonable conditions during business hours].~~~~

Section 3. Title of Position and Job Classification. (1) The official title of the job classification to which a position has been allocated shall be used to designate the position in~~[all]~~ payrolls and other official records, documents,~~[vouchers,]~~ and communications in connection with all personnel processes. For purposes of internal administration or for a purpose not involving the personnel processes, an office title or~~[.]~~ abbreviation~~[, or code symbol]~~ may be used in lieu of the job classification~~[class]~~ title.

(2) The Personnel Cabinet may change the title of a job classification to more accurately describe job functions that have been or may be assigned to a job classification~~[class]~~.

Section 4. Position Descriptions. Position descriptions shall state, in detail, the duties and responsibilities assigned to an individual position. If the duties and responsibilities assigned to a position are changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the appointing authority for the agency a position description, stating the revised duties and responsibilities. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the Secretary of the Personnel Cabinet with the appointing authority's recommendation for reclassification.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the classification plan for all positions in KRS Chapter

18A classified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(1)(c) and (7) require the Secretary of Personnel to promulgate administrative regulations which govern a position classification plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists with the consistent application and handling of the job classification plan.

(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 amended to incorporate the terms "job classification" and "job class specification" throughout. This ensures consistent reference to terminology as utilized in the Kentucky Human Resource Information System (KHRIS). Additional wording changes are made for clarification. Further, the amendment expands on the types of requirements and other information that may be included in a job class specification. Also, language is changed to indicate availability of job class specifications in an electronic format. In addition, the provision pertaining to position descriptions is updated with grammatical changes and moved to a new section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of the job classification plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in 18A.030(2); and KRS 18A.110(1)(c) and (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates and clarifies language needed to assist with the consistent application and handling of the job classification plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions and their agencies will be subject to the provisions of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with classified positions covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2); KRS 18A.110(1)(c) and (7).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification[class];

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the relevant job class specification[job classification].

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance

with the provisions for new appointments.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary; or

4. [] At a salary up to five (5) percent above the grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) A former employee who is probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, or pay grade change[or reallocation] until he is moved to a job classification[class] with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification[class] with a higher pay grade than that from which he was reclassified. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification[class] with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade[class], shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification[class] to:

1. The greater of the new grade minimum or five (5) percent; or
 2. The greater of the new grade minimum or ten (10) percent;
- or

3. The greater of the new grade minimum or a dollar amount approved by the secretary.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification[class] shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, an appointing authority may uniformly grant to all employees in that job classification[class] a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification[class] within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the job classification[class], on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate, under the following provisions:

1. The adjustment shall be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and

2. The total adjustment granted at the time of the special entrance rate and under this paragraph shall equal the difference in the former entrance rate and the new entrance rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b)[Section 3(2)(b)] of this administrative regulation.

(3) Annual increment dates shall be established as follows:

- (a) Upon completion of an initial probationary period;
- (b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or
- (c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall not change when an employee:

- (a) Is in a position which is assigned a new or different pay grade;
- (b) Receives a salary adjustment as a result of a reallocation;
- (c) Is promoted;
- (d) Is transferred;
- (e) Is demoted;
- (f) Is detailed to special duty;
- (g) Receives an educational achievement award;
- (h) Returns from military leave;
- (i) Is reclassified; or
- (j) Receives a promotional increase after completion of a promotional probationary period.

(5) Return from leave without pay. An employee returning to

duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary except if the adjustment is based on a pay grade change or a salary schedule change.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new

schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification[class] at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification[class] who is regularly assigned to work on Saturdays, Sundays, or[and] state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications[classes] in that agency who are regularly assigned to work Saturdays, Sundays, or[and] state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications[classes].

(3) Multilingual hourly premium.

(a) Upon request by an appointing authority, the Secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall

indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages.

Section 10. Employee Recognition Award. (1) On the 16th day of a month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to ~~ten (10)~~^{five (5)} percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in state service, twelve (12) consecutive months of which is in the department granting the award;

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an Adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and

2. The criteria and limitations established in this section have

been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) More than twenty-five (25) percent of the total number of full-time employees in a department, in a calendar year, shall not receive an ACE award.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department's current recurring base budget to support the award.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation

establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(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 amended to incorporate the terms "job classification" and "job class specification" throughout. This ensures consistent reference to terminology as utilized in the Kentucky Human Resource Information System (KHRIS). Additional wording changes are made for clarification. The Salary Adjustments section is amended to include "pay grade change" as an action requiring an employee to meet specific criteria prior to receiving a salary adjustment subsequent to demotion. Also, a new subsection is created to capture the requirement for converting a salary to an hourly rate before applying adjustments resulting from an employee's workweek change from thirty-seven and a half (37.5) hours to forty (40) hours, or vice versa. The Salary Advancements section is amended to include additional regulatory references for promotional increase exceptions. The Supplemental Premiums section is amended to clarify that those employees who are authorized weekend premiums and are regularly scheduled to work on Saturdays, Sundays, or state holidays shall receive payment of the premium. Also, the amended language clarifies that an employee is not eligible for a multilingual hourly premium if assigned to a job classification that includes interpreting services as a characteristic of the job on the job class specification. The Employee Recognition Award (ERA) section is amended to change the maximum amount of the award from five (5) percent of midpoint to ten (10) percent of midpoint to make it consistent with the handling of Adjustment for Continuing Excellence (ACE) awards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements and promote consistency for classified compensation.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for classified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions are subject to the provisions of 101 KAR 2:034.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The maximum amount of an Employee Recognition Award for KRS Chapter 18A classified employees is increased from five (5) percent of midpoint to ten (10) percent of midpoint to make it consistent with the handling of Adjustment for Continuing Excellence (ACE) awards. However, an agency is not required to award the maximum amount when recognizing an employee.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with classified employees covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2); KRS 18A.110(1)(c), (d), (g), and (7).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

**PERSONNEL CABINET
(Amendment)**

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations which govern open competitive exams to determine the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the application and examination requirements.

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

(2) The recruitment program shall:

(a) Accept an Application for Employment; and

(b) Hold an examination whenever and wherever the secretary deems it to be in the best interests of the Merit System.

(3) Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores.

(4) The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required;

(c) The opening date on which an application will be received for placement of the applicant on the register; and

(d) All other pertinent information and requirements.

Section 2. Minimum Qualifications for Filing Applications. An open-competitive examination shall be available to each applicant who meets the minimum requirements determined by the secretary with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) Licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) An Application for Employment shall be electronically submitted.

(2) An application shall require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information.

(3) An application shall be signed by the applicant personally or by electronic means. The truth of the statements contained in the application shall be certified by the applicant's signature.

(4) An applicant shall:

(a) Meet the minimum qualifications established in the job class specification as to education and experience; and

(b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that an application shall be received until further notice.

Section 4. Advance Examinations. (1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work within three (3) months following the date of receipt of the application, the

applicant shall be allowed to take the examination.

(2) An applicant taking the examination under subsection (1) of this section shall be eligible to apply for a specific vacancy announcement up to thirty (30) calendar days prior to completing the educational requirements.

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may:

(a) Designate monitors in various parts of the Commonwealth to conduct an examination under instructions prescribed by the secretary;

(b) Provide for the compensation of the monitors; and

(c) Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures.

(a) For open continuous testing, an applicant shall not:

1. Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or

2. Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience, the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary shall investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:

(a) Rate the candidate accordingly;

(b) Make the necessary revision of the rating; and

(c) Notify the candidate.

(6) The secretary shall determine the selection method for a qualifying job classification based upon the knowledge, skills, and abilities necessary for the job classification.

(a) The secretary shall notify the Personnel Board of the job classification and the minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those job classifications which are qualifying along with the minimum requirements for each job classification.

Section 9. Notice of Examination Results. (1) Each applicant shall be notified of the examination score as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his or her relative position on the register upon request and presentation

of proper identification.

Section 10. Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) days after receipt of the notice of examination results. Further, the secretary may correct an application submission error, if the error is called to the attention of the secretary within thirty (30) days of the issuance of a register certificate.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11. Examination Records. The secretary shall maintain all records pertinent to an application or examination for a period of three (3) years.

Section 12. Incorporation by Reference. (1) "Application for Employment", May 2015~~[October—2014]~~, is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application and examination requirements for state employment.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the consistent requirements for application for all state employment positions. This regulation ensures applicants and state employees are aware of the legal requirements and manner in which state employment applications are handled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern applications and examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures for personnel recruitment and certification, as well as improves the efficiency of the recruitment system.

(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 amended to incorporate the terms "job classification" and "job class specification" throughout. The Adjustment of Errors section is amended to include language providing for adjustment of application submission errors, which may occur in the electronic application system. The Application for Employment, incorporated by reference, is amended to correct punctuation, clarify or update notices and instructions for completion, add or revise labels and response options, and remove unneeded fields.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify existing procedures and ensure the correct version of the Application for Employment is incorporated by regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c).

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for application to classified positions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with classified positions covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110 (1)(a) and (7)(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? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7), 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.040, 18A.110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary. This administrative regulation establishes requirements for the state registers.

Section 1. Notification of Vacancies to Be ~~Filled~~[Filed] From a Register. An appointing authority shall notify the secretary as far in advance as possible of a vacancy in a full-time or part-time classified position to be filled from a register.

Section 2. Minimum Requirements. (1) The secretary shall review the qualifications of additional applicants who meet the minimum requirements and qualifications for a vacancy if there are insufficient applicants for the vacancy.

(2) The secretary shall, if appropriate, reevaluate an applicant's training and experience on the basis of the minimum qualifications required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) A register which has become exhausted shall expire upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(2) If a new examination is established for a job classification, the secretary shall send to each eligible remaining on the current register a notification prior to the administration of a superseding examination.

Section 4. Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position in the state personnel system.

(1) The secretary shall certify a full-time or part-time register which shall include:

(a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and

(b) The names of interested employees with internal mobility full-time or internal mobility part-time status who:

1. Meet the minimum requirements;

2. Seek promotion, demotion, or transfer to a different position; and

3. Have applied for a posted vacancy.

(2) An employee with status interested in internal mobility shall:

(a) Submit an Application for Employment to the Personnel Cabinet; and

(b) Apply for placement on the register.

(3) An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days.

Section 5. Reemployment Registers. The secretary shall prepare a reemployment register, which:

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list of current employees in the Internal Mobility Program for the job classification.

Section 6. Full-time or Part-time Registers. The secretary shall certify a separate register for full-time and part-time positions.

Section 7. Number of Registers. A person meeting minimum qualifications for job classifications shall be eligible to apply for any posted vacancy.

Section 8. Incorporation by Reference. (1) The "Application for Employment", May 2015~~[October 2014]~~, is incorporated by reference.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for the list of eligible candidates on state employment registers.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the requirements and different types of state employment registers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern registers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines how certified registers are established and controlled.

(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 amended to incorporate the terms "job classification" and "job class specification" throughout. In addition, Section 1 is amended to correct a typographical error. The Application for Employment, incorporated by reference, is amended to correct punctuation, clarify or update notices and instructions for completion, add or revise labels and response options, and remove unneeded fields.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update language and ensure the correct version of the Application for Employment is incorporated by regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes consistency and ensures the correct version of the employment application is incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with classified positions covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110 (1)(f) and (7)(d)

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

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

counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:066. Certification and selection of eligible applicants for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b),

(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligible applicants for appointment.

Section 1. Request for Certification of Eligible Applicants. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:

(a) Job classification[Class]; or

(b) County;

(2) Indicate:

(a) The number and identity of the positions to be filled;

(b) The title of the job classification for each position; and

(c) Other pertinent information which the appointing authority and the secretary deem necessary; and

(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.

(a) If one (1) position is involved, the secretary shall certify the names of:

1. Each applicant who:

a. Applied for the vacant position; and

b. If it is a tested position, has a score included in the highest five (5) scores earned through the selection method; and

2. All internal mobility candidates who are eligible and have applied for the vacant position.

(b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c) Each appointment shall be made from:

1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or

2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable. ~~(b) The eligibles~~

with the five (5) highest scores who self-nominated to vacant positions, if applicable.]

(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate or job requisition. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

(3) Subject to the provisions of KRS 18A.113 and KRS 18A.135, a vacancy associated with an active register certificate may be filled by an eligible who did not apply if filled by lateral transfer, reinstatement, reversion, or demotion.

Section 3. Preferences and[Preferred] Skills Questions. (1) The secretary shall approve a list of preferences and[preferred] skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferences and[preferred] skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferences and[preferred] skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferences and[preferred] skills questions to assist in applicant selection.

Section 4. Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the requirements certification and selection of eligibles for appointment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern certification and selection of eligibles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(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 amended to incorporate the terms "job classification" and "job class specification" throughout. The Certification of Eligible Applicants section is amended to remove redundant language. Also, wording is added to include the job requisition as a location of a certificate expiration date. In addition, a provision is added to further clarify the circumstances under which a vacancy may be filled outside of the register certification process. Finally, in Section 3, all references to preferred skills questions are changed to "preferences" and skills questions.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update language and clarify existing procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(b) and (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes consistency and clarifies requirements for certification and selection of eligibles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with classified positions covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110 (1)(b) and (7)

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.202, 199.555(1)

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:

a. Ensure proper evaluation of each suggestion;

b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; and

c. Reconsider denials as set forth in subsection (4) of this section.

2. A designated coordinator may present recommended suggestions to the council and request that the council vote on suggestions.

3. The council may defer action for up to one (1) year and one (1) month pending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet:

a. At a minimum on a quarterly basis; or

b. Upon the request of the council chairperson or a majority of the coordinators.

(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions.

(c) The coordinator shall present suggestions recommended for approval by the cabinet or agency to the council for consideration.

(2) Eligibility.

(a) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment or procedures;

2. Reduces time or cost of a work operation;

3. Creates a safer work environment;

4. Increases revenue; or

5. Improves relationships with or services for the public.

(b) The suggestion shall:

1. Present an improvement in state service or function;

2. Explain how the change would be accomplished;

3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;

4.a. Be made by an employee to the employee's cabinet or agency; or

b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;

5. Within ninety (90) working days of implementation by the agency, be:

a. Submitted on the Employee Suggestion Form, P-35; and

b. Accompanied by exhibits or illustrations as needed;

6. Be practical, useful, and constructive; and

7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion.

(c) The following suggestions shall not be eligible for a cash award:

1. A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggester upon submission of the suggestion;

2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's duties and responsibilities;

3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;

4. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;

5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or

6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(d) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.

(e)1. The first suggestion received shall take precedence over all future suggestions having the same purpose.

2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.

(f) A suggestion shall be considered a confidential communication among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) General provisions.

(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. A method to notify the suggester in writing that the suggestion has been received and to notify the suggester in writing of a change in the status of the suggestion;

2. A method to document the original suggestion, evaluation, and action taken; and

3. A method to prepare and present documentation of a suggestion for recommendation to the council.

(b)1. Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.

2. An evaluation shall be completed by a person with expertise

in the area under consideration.

3. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion Form, Form P-36, and the form shall be dated and signed by the individual making the evaluation.

(c)1. The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator.

2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.

3. A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved or denied.

4. If a suggestion will not be implemented, the coordinator shall notify the suggester in writing stating the reason it was not implemented.

5.a. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.

b. The request shall:

(i) Be in writing;

(ii) Be evaluated by the next level of supervision;

(iii) Be received by the agency within one (1) year from the date of rejection; and

(iv) Include information regarding the change in conditions.

(d) If a suggestion is approved and implemented by the cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.

1. The recommendation shall contain:

a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;

b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and

c. A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson of the council shall send written notification of the council's action to the suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.

3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(e) Award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.

2.a. The award check shall be issued by the agency where the suggester is employed.

b. Funds for payment shall come from the agency or agencies implementing the suggestion.

c. If applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.

3.a. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.

b. Documentation shall be conducted according to generally accepted accounting principles.

c. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis.

(f)1. If a suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of \$100 and a maximum of \$2,500.

2. If a suggestion approved by the council results in an intangible improvement in state service, the suggester shall be compensated in the amount of \$100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.

(4) Reconsideration.

(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.

(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.

2.a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.

b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.

(c) Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.

(5) Council review.

(a)1. A suggestion may be reviewed by the council on its own motion, or upon request of the suggester.

2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.

a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth in writing the basis for the request.

b.(i) The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.

(ii) If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.

(b) The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.

(c) The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestion's implementation or denial.

Section 2. Adoption Benefit Program. (1) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state funds for this program shall not exceed \$150,000 in a fiscal year.

(2) The eligible employee shall receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(3) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.

(4) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the finalization of the adoption.

(5) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that

specified in subsection (2) of this section~~[paragraph (a) of this subsection]~~.

(6) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel.

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

(a) "Employee Suggestion Form", P-35, October 2007;

(b) "Evaluation of Employee Suggestion Form" Form, P-36, February 2010; and

(c) "State Employee Adoption Assistance Application", May 2015~~[October 2007]~~.

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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions and requirements for the various types of incentive programs for state employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(1)(d) requires the secretary to promulgate administrative regulations for the classified service governing incentive programs. KRS 18A.202 authorizes the secretary to implement incentive programs for state employees by administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes provisions and requirements for an employee suggestion system incentive program and a state employee adoption benefit 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 Adoption Benefit Program section is amended to include notice of the fiscal year limit on total funds available per EO 98-1443. Also, a regulatory reference is corrected in subsection 5.

In addition, the State Employee Adoption Assistance Application form, incorporated by reference, is updated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency with the unclassified regulation for the Adoption Benefit Program. It is also necessary to incorporate updated changes on the Application form.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(1)(d) requires the secretary to promulgate administrative regulations for the classified service governing incentive programs. KRS 18A.202 authorizes the secretary to implement incentive programs for state employees by administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures consistency and updates material incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A classified employees and state executive branch agencies are subject to all provisions of this regulation. KRS Chapter 16 employees are subject to the provisions of the Employee Suggestion System section.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits to any entity identified above.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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 regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? KRS Chapter 18A classified employees and state executive branch agencies are subject to all provisions of this regulation. KRS Chapter 16 employees are subject to the provisions of the Employee Suggestion System section.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110(1)(d), and 18A.202(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 revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

PERSONNEL CABINET (Amendment)

101 KAR 3:045. Compensation plan and pay incentives.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)[EO 98-1443]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees[EO 98-1443 requires the secretary to establish a state employee adoption benefit program]. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee[an applicant] at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees: An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(2) Demotion. If an employee is demoted the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification[class] to which the

demotion is made; or

(b) The employee shall~~be allowed to~~ retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade[class] shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade[through a pay grade change], the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent; or

2. The greater of the new grade minimum or ten (10) percent;

or

3. The greater of the new grade minimum or a dollar amount approved by the secretary[salary of all employees below the new minimum shall be raised to the new minimum.]

(a) If sufficient funds are available, an appointing authority may provide an increase to an employee whose salary is at or above the new minimum of the job classification in one (1) of the following amounts:

1. Five (5) percent;

2. Ten (10) percent; or

3. A dollar amount approved by the Secretary of Personnel].

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification[An employee in a class assigned to a lower pay grade through a grade change] shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds

are available, an appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate and the new special entrance rate to other employees in that job classification.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority shall grant a five (5) percent increase to an employee, except an interim employee:

(a) On the first day of the month following completion of six (6) months of service; or

(b) No later than the first day following twelve (12) months of service.

(c) If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service, the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service.

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:

(a) On the date of receiving an initial appointment increase;

(b) On the first of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee; or

(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the

former seasonal, temporary, or emergency[, provisional or federally funded, time-limited] categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary except if the adjustment is based on a pay grade change or a salary schedule change. (6) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.]

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service;

c. After establishing an increment date; and

d. On or after January 1, 1984.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new

schedule minimum for the grade.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion, or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification[class] at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(3) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual

premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages.

Section 9. Employee Recognition Award. (1) On the 16th day of a month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to ten (10)[five-(5)] percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) months in state service, twelve (12) consecutive months of which is in the department granting the award;

(b) The employee has not received an ERA in the preceding twelve (12) months or an ACE or a distinguished service award in the preceding twenty-four (24) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(5) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and
2. The criteria and limitations established in this section have been met.

Section 10.[7:] Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date.

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award.

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance; or

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through agency directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department's current recurring base budget to support the award.

Section 11,[8-] Adoption Benefit Program. (1)[The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to a state employee in the executive branch who adopts a child on or after November 1, 1998.

(2) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state[Available] funds for this program shall not exceed \$150,000 in a fiscal year.

(2) [(3)] The eligible employee shall receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(3) [(4)] Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption in accordance with [as allowed by] state and federal law and after review and approval [reviewed and approved] by the court at the [time of] finalization of the adoption.

(4) [(5)] Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with [and supported by] documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Health and Family Services [Families and Children] that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(5) [(6)] If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (2) [(3)] of this section.

(6) [(7)] Upon approval of the application for financial assistance, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel [if the funds

authorized for the program have not been exhausted].

Section 12,[9-] Incorporation by Reference. (1) State Employee Adoption Assistance Application, May 2015 [July 1999], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, [200 Fair Oaks Lane, 5th Floor,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Tim Longmeyer, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 21, 2015 at 10:00 a.m. at 501 High Street, 3rd floor, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan and pay incentives for unclassified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.155 requires the secretary to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

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

(a) How the amendment will change this existing administrative regulation: This regulation is amended to replace references to EO 98-1443 with statutory authority. The terms "job classification" and "job class specification" are incorporated throughout. The Salary Adjustments section is amended to add a provision for pay grade changes, to make the unclassified regulation consistent with the classified regulation. Also, a new subsection is created to capture the requirement for converting a salary to an hourly rate before applying adjustments resulting from an employee's workweek change from thirty-seven and a half (37.5) hours to forty (40) hours, or vice versa. The Salary Advancements section, return from leave without pay, is amended to make the unclassified

regulation consistent with the classified regulation. The service computation subsection is amended to remove an obsolete type of employment and correct the improper inclusion of an exception for FFTL employment. Also, a new provision, describing the order of calculating increments, is added for consistency with the classified regulation. Salary Schedule Adjustment, Maintenance and Maintenance Allowance, and Supplemental Premium sections are added to match the classified regulation. Note: this is not a policy change, nor does the addition of these sections result in a budget impact; the provisions need to be added because they also apply to unclassified employees. The Employee Recognition Award (ERA) section is amended to change the maximum amount of the award from five (5) percent of midpoint to ten (10) percent of midpoint to make it consistent with the handling of Adjustment for Continuing Excellence (ACE) awards and the classified regulation. The Adoption Benefit Section is amended to match the provisions of the classified regulation. Likewise, the State Employee Adoption Assistance Application form, incorporated by reference, is updated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify requirements and promote consistency for unclassified compensation and pay incentives.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.155 requires the secretary to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies requirements and promotes consistency for unclassified compensation and pay incentives.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A employees in unclassified positions within executive branch agencies are subject to the provisions of 101 KAR 3:045.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

(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 anticipated to any entity identified above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The maximum amount of an Employee Recognition Award for KRS Chapter 18A unclassified employees is increased from five (5) percent of midpoint to ten (10) percent of midpoint to make it consistent with the handling of Adjustment for Continuing Excellence (ACE) awards. However, an agency is not required to award the maximum amount when recognizing an employee.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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

regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? All state agencies with unclassified employees covered under KRS Chapter 18A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), KRS 18A.155(1)(b) and (e), KRS 18A.110(2), KRS 18A.202(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 revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments within this 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:

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

Section 1. Definitions. (1) "Formal complaint" means a formal administrative pleading authorized by the board that states a charge against a credential holder or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(2) "Grievance" means information that a person has allegedly violated the requirements of KRS Chapter 324A or 201 KAR Chapter 30.

Section 2. Grievance and Answers. (1)(a) The board shall process any grievance submitted against a licensee or certificant.

(b) A grievance against a licensee or a certificant shall be submitted in writing.

(c) The person or organization who submits a grievance shall

be identified within the document.

(d)[(b)] A grievance shall contain a concise statement of the facts, transaction, or occurrence upon which it is based.

(e)[(e)] Exhibits or other documents, if applicable, shall be attached to the grievance.

(f)[(d)] A copy of the grievance and attachments shall be served on the licensee or certificant by the board:

1. At the last known address of the licensee or certificant; and
2. By certified mail, return receipt requested.

(2) If the board receives an anonymous grievance, an investigation shall be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious.

(3)(a) The licensee or certificant shall file with the board an answer to the grievance.

(b) The answer shall be filed with the board within twenty (20) days after service of the grievance.

(c) A copy of the answer shall be served on the grievant by the licensee or certificant, by certified mail, return receipt requested, to the address shown on the grievance.

Section 3. Investigations. (1) The board shall conduct an investigation of the facts alleged in a grievance:

(a) Upon receipt of a grievance and answer; or

(b) If an answer is not filed with the board, upon expiration of the period established in Section 2(3)(b)[2(2)(b)] of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

- (a) Was conducted by the board or board personnel;
- (b) Was authorized by the board or board personnel; and
- (c) Is related to the subject matter of the grievance.

(3) A party may rebut or comment upon the information or investigation established in subsection (1) of this section.

(4) An investigation, or information resulting from an investigation, shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

(5) The requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040, shall not apply to the board, its agents, and employees with regard to preparing an investigation for enforcement and disciplinary cases pursuant to this administrative regulation.

Section 4. Dismissal of Grievance. The board shall dismiss a grievance if the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the licensee or certificant in writing if it dismisses the grievance.

Section 5. Formal Complaints. (1) If the facts alleged constitute a prima facie violation of KRS Chapter 324A, 201 KAR Chapter 30, or USPAP, the board shall issue a formal complaint, in accordance with KRS Chapter 13B, against the credential holder or applicant and proceed pursuant to KRS 324A.052.

(2) The board may enter into informal settlement with the credential holder.

(a) A settlement conference shall be convened upon agreement of the parties.

(b) A person with a relationship to the proceedings who is permitted to attend the settlement conference may include the board's investigator, executive director, board representative, licensee or certificate holder, and an attorney or attorneys, as applicable.

(c) If the parties to a settlement conference agree on a stipulation, proposed term, or condition for an agreed order to resolve the complaint, the agreed order shall be forwarded to the board for consideration.

(d) If the proposed agreed order is approved by the board, the complaint shall be considered resolved and a hearing shall not be held.

HAROLD BRANTLEY, Chairperson

APPROVED BY AGENCY: May 22, 2015

FILED WITH LRC: June 5, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015, at 1:30 p.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 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 the end of the day on July 31, 2015. 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 governs the grievance process.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the process that the board must follow to comply with KRS 324A.052.

(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 who may be certified or licensed and the general requirements for certification or licensure.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the grievance and investigation process.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires the identity of a person or organization making a grievance to be included and if not, how the board will handle an anonymous grievance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board maintains the most updated standards of practice within the industry.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 authorizes the board to promulgate regulations to investigate allegations of wrongdoing under this chapter. KRS 324A.052 provides the mechanism for the process of handling grievances and investigations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides how the board can handle anonymous grievances that lack sufficient corroborating evidence to make a determination.

(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: Licensees and certificate holders will not face grievances which are anonymously filed that lack any corroborating evidence.

(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): Licensees and certificate holders will not face grievances which are anonymously filed that lack any corroborating evidence.

(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 credential 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.

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.020 and KRS 324A.052.

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:

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

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in this administrative regulation.

(3) "Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.

Section 2. Gear Requirements. (1) The gear listed in subsections (2) through (16) of this section shall be the only legal commercial fishing gear allowed in commercial fishing waters established in 301 KAR 1:150 and under the conditions established in 301 KAR 1:155 by a licensed commercial fisherman.

(2) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except that the minimum mesh size shall be one (1) inch in the following waters:

(a) The Ohio River;

(b) The Mississippi River; and

(c) Those portions of the following waters open to commercial fishing pursuant to 301 KAR 1:150:

1. The Cumberland River below Barkley Dam; and

2. The Tennessee River below Kentucky Dam.

(3) A hoop may be made of any:

(a) Size;

(b) Shape; or

(c) Material.

(4) Wings and leads shall be constructed of the following material:

(a) Natural multifilament; or

(b) Synthetic.

(5) Netting used for wings and leads shall:

(a) Be constructed of twine no smaller than number six (6) nylon or the equivalent;

(b) Have a breaking strength of fifty-five (55) pounds or greater; and

(c) Have a bar mesh size no larger than one (1) inch.

(6) Wings and leads may consist of either:

(a) Knotted construction; or

(b) Knotless construction.

(7) The maximum length of each hoop net wing or lead shall be sixty (60) feet.

(8) The following nets shall be fished as individual nets:

(a) Hoop nets;

(b) Wing nets;

(c) Straight lead nets; or

(d) Heart lead nets.

(9) Wings or leads shall:

(a) Not be tied together to become a continuous multiple net unit; and

(b) Be used only to lead fish into a hoop net.

(10) One (1) commercial gear tag shall be attached to the first hoop of each net.

(11) A gill or trammel net:

(a) May be fished:

1. Weighted; or

2. As a flag net; and

(b) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(12) A gill or trammel net shall only be used in:

(a) The Ohio River;

(b) The Mississippi River; or

(c) An overflow lake adjacent to the Ohio or Mississippi River[only] if the lake can be accessed from the river by a boat during high flow conditions, except as prohibited:

1. [(a)] On department Wildlife Management Areas pursuant to

301 KAR 4:020 and 4:050; or

2. [(b)] Pursuant to the requirements of 301 KAR 1:140.

(13) The bar mesh size on gill or trammel nets shall be:

(a) At least three (3) inches in:

1. The Mississippi River; and

2. Overflow lakes adjacent to the Mississippi River;

(b) At least four (4) inches from November 1 through April 30

in:

1. The Ohio River; and

2. Overflow lakes adjacent to the Ohio River; and

(c) Between four (4) and four and one-half (4 1/2) inches from May 1 through October 31 in:

1. The Ohio River; and

2. Overflow lakes adjacent to the Ohio River.

(14) A commercial trotline shall:

(a) Have more than fifty (50) hooks placed no closer than eighteen (18) inches apart;

(b) Have one (1) commercial gear tag attached; and

(c) Not be longer than 6,000 feet.

(15) A seine:

(a) Shall have a maximum bar mesh size of one (1) inch;

(b) May have knotted netting if constructed of twine that is:

1. No smaller than number six (6) nylon; or

2. An equivalent having a breaking strength of at least fifty-five

(55) pounds;

(c) May have knotless netting if constructed of twine that is:

1. No smaller than number 147 nylon; or

2. An equivalent having a breaking strength of fifty (50) pounds

or greater;

(d) Shall be constructed of:

1. Natural multifilament; or

2. Synthetic material;

(e) Shall have both float and lead lines;

(f) Shall have the following attached at each end:

1. Wood poles;

2. Fiberglass poles; or

3. Brailes;

(g) Shall be attended by a person who pulls the seine by hand through the water to entrap fish; and

(h) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(16) A slat trap basket shall:

(a) Not have wire or other mesh added to any part of the trap;

(b) Have at least two (2) openings left between slats:

1. No smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap; and

2. That shall not be restricted by cross-bracings to a length shorter than eight (8) inches;

(c) Not be larger than two (2) feet in diameter or square-end measure; and

(d) Have one (1) commercial gear tag attached to the opening ring or square.

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: June 10, 2015

FILED WITH LRC: June 12, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through July 31, 2015. 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 specifies the legal methods that may be used by commercial fisherman to harvest rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the types of legal gear that may be used by commercial fisherman to harvest rough fish from waters open to commercial fishing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the size and types of gear that commercial fisherman can use to take rough fish.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds wording that was inadvertently removed during the last revision of this regulation in 2013. The wording was changed back to its original intent of allowing gill or trammel nets to be used only in the Ohio and Mississippi rivers as well as certain overflow lakes off of these rivers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to avoid excessive fish harvest and by-catch in waters outside of the Ohio and Mississippi rivers and their overflow lakes.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is unlikely that this amendment will affect any commercial fishermen using commercial gill nets outside of the Ohio or Mississippi Rivers since almost all of the commercial fishermen were unaware of the inadvertent wording mishap.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen will only be allowed to use gill or trammel nets in the Ohio and Mississippi rivers and certain overflow lakes associated with these rivers.

(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 individuals complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fishermen will benefit through prevention of overharvest and by-catch of some fish species, which will promote a more healthy fish population.

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

(a) Initially: There will be no cost initially to implement this administrative regulation.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all commercial fishermen 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 Kentucky 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. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish.

(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? Revenue will not be 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? Revenue will not be generated by this administrative regulation during subsequent years.

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

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation

establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," June 4, 2015 [September 11, 2012], are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Equal Access to Services (Amended 6/4/15[9/11/12])
- 27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/4/15[7/11/12])
- 27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 6/4/15[12/16/11])
- 27-09-01 Community Resources (Amended 6/4/15[7/11/12])
- 27-10-01 Pretrial Diversion (Amended 6/4/15[7/11/12])
- 27-10-02 Mandatory Re-Entry Supervision (Amended 6/4/15[3/12/12])
- 27-10-03 Post-incarceration Supervision (Amended 6/4/15[3/12/12])
- 27-11-01 Citizen Complaints (Amended 6/4/15[9/11/12])
- 27-11-02 Staff-Offender Interaction (Amended 6/4/15[9/11/12])
- 27-12-01 Case Classification (Amended 6/4/15[3/12/12])
- 27-12-03 Initial Interview and Intake of New Case (Amended 6/4/15[7/11/12])
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 6/4/15[12/16/11])
- 27-12-05 Releasee's Report Document (Amended 6/4/15[7/11/12])
- 27-12-06 Grievance Procedures for Offenders (Amended 6/4/15[12/16/11])
- 27-12-07 Administrative Caseloads (Amended 6/4/15[7/11/12])
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 6/4/15[3/12/12])
- 27-12-13 Community Service Work (Amended 6/4/15[7/11/12])
- 27-12-14 Offender Travel (Amended 6/4/15[12/16/11])
- 27-13-01 Drug and Alcohol Testing of Offenders (Amended 6/4/15[9/11/12])
- 27-14-01 Interstate Compact (Amended 6/4/15[3/12/12])
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 6/4/15[3/12/12])
- 27-15-02 Home Incarceration, Curfew, and Electronic Monitoring for Community Offenders
- 27-15-03 Graduated Sanctions and Discretionary Detention (Amended 6/4/15[3/12/12])
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 6/4/15[7/11/12])
- 27-17-01 Absconder Procedure (Amended 7/11/12)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 7/11/12)
- 27-19-01 Preliminary Revocation Hearing (Amended 6/4/15[3/12/12])
- 27-20-03 Parole Compliance Credit (Amended 3/12/12)
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11)
- 27-23-01 In-state Transfer (Amended 7/11/12)
- 27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)
- 27-24-02 Reinstatement of Offenders to Active Supervision (Amended 7/11/12)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12)
- 27-30-01 Sex Offender Registration (Amended 12/16/11)
- 27-30-02 Sex Offender Supervision (Amended 7/11/12)
- 28-01-01 Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)
- 28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 3/12/12)
- 28-01-08 Calculation of Custody Time Credit (Amended 9/11/12)
- 28-03-01 Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)
- 28-03-02 Release on Parole (Amended 12/16/11)

28-04-01 Furlough Verifications (Amended 7/11/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: May 25, 2015

FILED WITH LRC: June 4, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 9:00 a.m. in the at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.030, 196.035, 196.037, 196.070, 196.075, 439.470, and 439.480.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures relating to supervision of probation and parole offenders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes policies and procedures relating to supervision of probation and parole offenders and provides clear direction and information to probation & parole employees in the supervision of offenders.

(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 revise policies and procedures for probation and parole.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.030, 196.035, 196.037, 196.070, 196.075, 439.470, and 439.480.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates policy and procedures relating to supervision of probation and parole offenders. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation & Parole.

(d) How the amendment will assist in the effective administration of the statutes: This will assist the Division of Probation & Parole in operating more efficiently by streamlining supervision processes, case management strategies, and adopting effective intervention practices.

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

administrative regulation: This affects 825 Kentucky Department of Corrections Division of Probation and Parole employees, 46,349 offenders, and 120 Circuit Courts and the Parole 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: Probation and parole officers will have to learn new procedures to comply with regulatory changes. The Department will provide routine training to staff. Offenders will abide by revised policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not affect revenue. The Division of Probation & Parole averages fifty-five (55) - sixty (60) offenders on electronic monitoring with curfew per month. The cost of monitoring equipment for home incarceration is assumed by the offender with payment made directly to the monitoring service provider. The cost of electronic monitoring is estimated at twenty (20) dollars and thirty-three (33) cents per day, a considerable savings compared to the cost of incarceration. Offenders on electronic monitoring are subject to the supervision fees (as set by the releasing authority and paid into the Kentucky general fund) and drug testing fees (allocated to Department of Corrections restricted funds).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Offenders will benefit from efficient probation and parole supervision, more streamlined supervision processes, and focused intervention strategies. The Division of Probation & Parole will allocate resources to supervision services and programs according to nationally recognized evidence based practices.

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

(a) Initially: The amendment to the regulation updates supervision practices but does not add costs beyond what is budgeted to the Department of Corrections. The Department continues to staff as funding levels allow. The routine annual officer training costs of \$411 per officer remain the same.

(b) On a continuing basis: The Department continues to staff as funding levels allow. The routine annual officer training costs of \$411 per officer are expected to remain the same.

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

(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 the amendments in this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders. This regulation also sets fees for drug testing required for offenders on supervision. No increase in fees has been made in this amendment.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections, 120 Circuit Courts, and the Parole Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.035, 196.037, 196.070, 196.075,

197.045, 439.310, 439.3106, 439.3107, 439.3108, 439.315, 439.330, 439.340, 439.3406, 439.346, 439.348, 439.430, 439.470, 439.480, 439.551, 439.552, 439.561, 439.563, 532.220, 533.020, 533.030, 533.050, 533.250, 533.256.

(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 releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$150,000-\$200,000 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In CY 2014, the Division collected over \$931,000 in drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds. This amendment does not affect 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? It is anticipated that the amount collected will be similar for subsequent years. This amendment does not affect revenue.

(c) How much will it cost to administer this program for the first year? No new program is created. The routine annual officer training costs of \$411 per officer remain the same. Annual officer training costs are approximately \$250,000.

(d) How much will it cost to administer this program for subsequent years? The Department continues to staff as funding levels allow. The routine annual officer training costs of \$411 per officer is expected to remain the same. Annual officer training costs are approximately \$250,000.

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
(Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, ~~[beginning with the 2014-2015 school year,]~~ the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics and distribute these requirements to all middle schools and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event (advertised or promoted as a school event), whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A member of a school coaching staff (designated or hired, whether paid or unpaid) is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school (formal, informal, or team nickname);

(i) Competitors in the contest, event, or tournament are provided resources (promotional or otherwise) by the school including school media recognition, signage, and items clearly indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any coach (head or assistant, paid or unpaid) desiring to coach interscholastic athletics at the middle school level meet the requirements of KRS 156.070(2)(f)2. and KRS 160.380(4) and (6);

(3)(2) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the form approved for use at the middle school level;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high[middle] school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs; and

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

(4)(3) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the Kentucky Board of Education with recommendations for changes in statute, administrative regulation, or policy;

(5)(4) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6)(5) Provide notice to the middle schools related to any

program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7)(6) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445, and other requirements for coaches at the middle school level;

(8)(7) Beginning with the 2015-2016 school year, require any student enrolled initially in grade five (5) through eight (8) during the 2015-2016 school year or thereafter who is repeating a grade for any reason, to be ineligible to compete in interscholastic competition involving students enrolled in grades six (6) through eight (8) while repeating a grade;

(9)(8) Beginning with the 2015-2016 school year, require any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(10)(9) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(11)(40) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;~~(14) Require that the common schools at the middle school level may only compete in contests against schools, including combined elementary or middle school teams, that adhere to these provisions;~~

(12) Issue an annual report to the Kentucky Board of Education on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy; and

(13) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation.

Section 4. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

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

- (a) "KHSAA Constitution", 6/2013;
- (b) "KHSAA Bylaws", 6/2015[6/2014];
- (c) "KHSAA Due Process Procedure", 6/2014;
- (d) "KHSAA Board of Control and Officials Division Policies", 6/2015[6/2014];
- (e) "KHSAA Form BA101- Baseball Pitching Limitation", 4/2009;
- (f) "KHSAA Form FB102- Football Financial Report", 9/7/2009;
- (g) KHSAA Form GE01, "Application for Renewal of Membership", 5/2015[4/2014];
- (h) KHSAA Form GE02, "Application for New Membership", 5/2015[4/2014];
- (i) KHSAA Form GE04, "Athletic Participation[Physical Examination] Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 4/2015[4/2014];
- (j) KHSAA Form GE06, "Transfer Form – Citizens of the U.S. or U.S. Territories", 4/2014;
- (k) KHSAA Form GE07, "Application for Foreign Exchange Student (Non Domestic) Eligibility", 4/2014;
- (l) KHSAA Form GE08, "Application for Foreign Student, Non-Exchange (Non Domestic) Eligibility", 4/2014;
- (m) "KHSAA Form GE14- Contract for Athletic Contests", 4/2014;
- (n) KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 4/2014;
- (o) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;
- (p) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;
- (q) ~~"KHSAA Form GE26- Financial Aid Report", 5/2011;~~
- (r) ~~KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;~~
- (s) ~~(t)~~ "KHSAA Form GE36- Add. Info for Appeal", 5/2011;
- (u) ~~(v)~~ "KHSAA Form GE52- District Tournament Financial Report", 4/2014;
- (w) ~~(x)~~ KHSAA Form GE53, "KHSAA Regional Tournament Financial Report", 6/2015[4/2014];
- (y) ~~(z)~~ "KHSAA Form GE69- Waiver – 15 Day Exceptions", 5/2011;
- (v) KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;
- (w) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015;
- (x) KHSAA Form SO112, "Semi-State Tournament Financial Report", 6/2015[4/2014];
- (y) ~~(z)~~ KHSAA Form WR111, "Wrestling Skin Condition", 6/2015[4/2014];
- (z) ~~(aa)~~ KHSAA Form WR126, "Minimum Weight Certification Program Assessor Designation", 4/2014; and
- (aa) ~~(zz)~~ "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation[MS1 – Physician & Parental Permission]", 4/2015[9/2013].

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

subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, PH.D., Commissioner

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 24, 2015, 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 until July 31, 2015. 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, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected 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: These amendments make changes to the documents incorporated by reference, in the KHSAA Bylaws 7, 9, 14, 23, 26, as adopted by the KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative

regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to provide additional guidance for interscholastic athletics at the middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process Procedure to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a more sound structure of governance. Other amendments are necessary to ensure the health and safety of students participating in interscholastic athletics.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 School Districts and other member organizations of the KHSAA.

(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: There will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

(a) Initially: Minimal

(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: KHSAA is funded through membership fees and dues, as well as from gate receipts from the various state championships.

(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? 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 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 156.070 and 702 KAR 7:065.

(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 is no additional expense to the school districts as a result of 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 costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are minimal.

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 (Amendment)

704 KAR 3:303. Required[core] academic standards.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451. KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky[core] Academic Standards, which contain[contains] the general courses of study and academic content standards for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky[Core] Academic Standards.

Section 2. Incorporation by Reference. (1) The "Kentucky[Core] Academic Standards", June 2015[September 2013], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Standards, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, PH.D., Commissioner

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 24, 2015, 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 until July 31, 2015. 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, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes courses of study (standards) for the common schools in Kentucky through the Kentucky Academic Standards that are incorporated by reference.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to prescribe courses of study (standards) and KRS 158.6453 requires the revision of arts education standards. This administrative regulation establishes content standards for Kentucky students in grades K-12.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes content standards for grades K-12 through the Kentucky Academic Standards, incorporated by reference, and specifically amends the standards to include revised arts education standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides schools with specific standards to be met through courses of study as required by KRS 156.070, KRS 156.160 and KRS 158.6453. This administrative regulation does not establish school curricula. School curricula is prescribed by local school districts pursuant to KRS 160.290 and KRS 160.345.

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

(a) How the amendment will change this existing administrative regulation: This amendment to 704 KAR 3:303 replaces the Kentucky Core Academic Standards for Arts and Humanities adopted by the Kentucky Board of Education in 2006 with the new arts education standards adopted by the Kentucky Board of Education on June 3, 2015.

(b) The necessity of the amendment to this administrative regulation: Because the Kentucky Board of Education has adopted new arts education standards as required by KRS 158.6453, the regulation must be amended to include the new standards.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation establishes content standards for students in grades K-12, and the amendment updates the arts education standards as approved by the Kentucky Board of Education and as required by KRS 158.6453.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides schools with specific standards and the amendment updates those standards for arts education as required by KRS 158.6453.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those impacted entities will be each of Kentucky's public school districts, including students thereof.

(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: Districts will assist schools in aligning the educational programs in schools to meet the amended requirements in the Kentucky Academic Standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of implementing amendments to this administrative regulation will vary by school district. The size of the school district, as well as other factors, will play a role in overall cost to districts. The Kentucky Department of Education will provide guidance, professional learning, and will identify resources to support the implementation of the new arts standards using a regional approach.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New standards for arts education define knowledge and performance criteria to be college, career, and civic ready, which includes being literate in the arts and an effective member of the workforce. Our state and country; define performance expectations for demonstrating competency or proficiency in the arts; define a K-12 progression of knowledge and skills; students will transition from elementary to middle school to high school ready to meet the expectations; students will move beyond knowing facts about the arts to being able to produce, perform, and respond by applying and integrating the knowledge with the skills.

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

(a) Initially: KDE will invest approximately \$350,000 each year for the next two (2) years through partnerships for arts academies and for providing regional professional learning opportunities to support the effective implementation of the arts standards.

(b) On a continuing basis: After the initial two (2) year expenditure, KDE will continue to support local school districts through access to resources available online, via KET, and through the Continuous Instructional Improvement Technology System (CIITS). CIITS is currently utilized by the agency and no additional cost is anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds for arts teacher academies and standards implementation support have been targeted for this purpose.

(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: KDE has not requested additional funds for implementation of the new arts education standards. KDE will allocate funding as described in 5(a) above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 158.6451, 158.6453, 160.290.

(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? The proposed regulation, as required by SB 1 (2009), will result in audits of low-performing schools and districts. The Kentucky Department of Education will invest approximately \$350,000 over the next two (2) years for academies and other regional professional learning support designed to build capacity across districts to effectively implement the new arts education standards.

(d) How much will it cost to administer this program for subsequent years? After the initial two (2) year expenditure, KDE will continue to support local school districts through access to resources available online, via KET, and through the Continuous Instructional Improvement Technology System (CIITS). CIITS is currently utilized by the agency and no additional cost is anticipated as a result of this amendment.

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

Revenues (+/-): None.

Expenditures (+/-): \$350,000 per year for two (2) years.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

705 KAR 4:041. Work-based learning~~[Cooperative]~~ program standards.

RELATES TO: KRS~~[454B.025;]~~ 156.029(7), 156.802, 158.810(4).

STATUTORY AUTHORITY: KRS~~[454B.025(5);]~~ 156.029(7), 156.070(1), 156.802(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(5)~~[454B.025(5)]~~ requires the Kentucky Board of Education to establish program standards for secondary area career and technical~~[vocational]~~ education and technology centers. This administrative regulation establishes program standards for work-based learning~~[cooperative vocational education]~~ in area~~[vocational education and]~~ technology centers and local school districts.

Section 1. Definitions. (1) "Career and technical education" is defined in KRS 158.810(4).

(2) "Cooperative education" means an educational program consisting of in-school instruction combined with program related on-the-job paid work experience in a business or industrial establishment.

(3) "Work-based learning" means an effective teaching approach used to engage students in real-life occupational experiences, that incorporates structured, work-based learning activities into the curriculum, and allows a student to apply knowledge and skills learned in class and connect these learning experiences in the workplace.

Section 2. Cooperative~~[vocational]~~ education shall meet the following minimum requirements:

(1) To participate in cooperative~~[vocational]~~ education, a student shall be at least sixteen (16) years of age.

(a) A student who is under eighteen (18) shall secure a verification of age issued by the local superintendent of schools.

(b) A student who is between age eighteen (18) to twenty-one (21) shall have a certificate of age on file with the employer.

(2) A student shall have:

(a) Successfully completed the basic career and technical skill~~[vocational skills]~~ prerequisites required by the preparatory program the student~~[he]~~ is pursuing; and

(b) Gained sufficient knowledge and skills necessary for success in a cooperative education program.

(3) A student shall be:

(a) Enrolled in a course included within the student's chosen

career pathway within the same academic year;

(b) A career pathway completed by the conclusion of the student's junior year; or

(c) Enrolled in an approved pre-apprenticeship program~~[enrolled in a related preparatory educational subject within the school year].~~

(4) The cooperative education program shall be an integral part of the school's program of studies and be described in the school catalog.

(5) A student may receive academic credit on an hour-for-hour basis equivalent to a Carnegie~~[Carneige]~~ Unit only for work experience directly related to the student's individual learning~~[graduation]~~ plan (ILP) and approvable under the minimum requirements for high school graduation, 704 KAR 3:305~~[Program of Studies for Kentucky Schools, 704 KAR 3:303]~~.

(6) A student shall receive a salary for the work experience phase of instruction in accordance with local, state, and federal minimum wage requirements.

(7) The school shall arrange and coordinate with the employer for on-the-job training. A training agreement by the school, student, parent, and employer shall be placed on file with the school.

(8) A student shall be excused from school attendance only for the purpose of participating in an approved cooperative education program activity.

(9) The program shall include an evaluation component to assess the effectiveness of the program in assisting students in the achievement of their educational and career goals.

(10) The student shall spend a minimum of ten (10) clock hours per week in a salaried position which provides work experience directly related to the student's career goals as identified in his individual learning~~[graduation]~~ plan (ILP).

(11) The school shall provide work site supervision of the student by a certified teacher-coordinator on a regular basis throughout the period of time a student is participating in the cooperative education program.

Section 3. Other types of work-based learning opportunities for secondary students may include service learning, mentoring, shadowing, entrepreneurship, school-based enterprises, internships, and pre-apprenticeships. Definitions of each type of work-based learning are located in the Kentucky Work-Based Learning Manual. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

Section 4. Incorporation by Reference. (1) "Kentucky Work-Based Learning Manual", March 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Career and Technical Education, 20th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, PH.D., Commissioner

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 24, 2015, 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 July 31, 2015. 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 establishes program standards for the various forms of work-based learning. It also incorporates the guidance of the Kentucky Work-Based Learning Manual (March 2015) by reference.

(b) The necessity of this administrative regulation: 705 KAR 4:231 guides the general program standards for secondary career and technical education programs, which mandates that such programs shall provide opportunities for students to participate in high quality work-based learning experiences related to the program in which they are enrolled. The Kentucky Work-Based Learning Manual provides proper guidance on the proper compliance of federal and state child labor laws and other relevant implementation guidelines.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides policies and guidance to govern work-based learning programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides policies and guidance to govern work-based learning programs.

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

(a) How the amendment will change this existing administrative regulation: The amendments broaden the policies and guidance to all forms of work-based learning, rather than just cooperative education. The amendments also extend eligibility requirements for cooperative education and incorporate the Kentucky Work-Based Learning Manual (March 2015) by reference. A new definitions section also seeks to clarify statutory language and outdated language has been updated.

(b) The necessity of the amendment to this administrative regulation: The amendments broaden the pool of potential pool of eligible cooperative education student enrollments, as well as provides implementation policy and guidance for all other types of work-based learning.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides policies and guidance to govern work-based learning programs.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides policies and guidance to govern work-based learning programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts and the area technology centers (ATCs) in Kentucky and supporting staff in the Kentucky Department of Education.

(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 amendment will impact schools and districts and the Kentucky Department of Education by providing the detail necessary to consistently implement work-based learning programs.

(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 Kentucky Department of Education, schools and districts shall implement the specific requirements of the work-based learning programs.

(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 the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will experience consistent guidance to make continuous improvement of their work-based learning programs. The changes in the eligibility requirements for cooperative education will now provide schools with greater flexibility in who may complete such a program.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(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 or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and area technology centers

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(5); KRS 156.029(7); KRS 158.810 (4); KRS 156.070(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? 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? Amendment adds no additional costs.

(d) How much will it cost to administer this program for subsequent years? Amendment adds 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: Regulation does not generate revenue or establish fees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:180. Recordkeeping; reporting; statistics.

RELATES TO: KRS 338.121(3), 338.161, 29 C.F.R. Part 1904
STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards, represented by the Commissioner to promulgate administrative regulations requiring employers to report their occupational safety and health statistics. 29 C.F.R. Part 1904 establishes the federal requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers covered under KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Loss of eye" means the physical removal of an eye from the socket.

(5) "Occupational Safety and Health Act" means KRS Chapter 338.

(6) [(5)] "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(7) [(6)] "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. Employers shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and the requirements of Section 3 of this administrative regulation:

(1) 29 C.F.R. Part 1904, revised July 1, 2014; and

(2) Beginning January 1, 2016, the revisions to 29 C.F.R. Part 1904 as published in the September 18, 2014 Federal Register, Volume 79, Number 181 [the requirements for reporting and recording of occupational injuries and illnesses established at 29 C.F.R. Part 1904, revised as of July 1, 2008, as amended by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation].

Section 3. Reporting Fatalities, Amputations, [or] In-Patient Hospitalizations, or Loss of Eye. The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(1) Employers shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident which results in the following:

(a) The death of any employee; or

(b) The hospitalization of three (3) or more employees.

(2) The report required under subsection (1) of this section shall be made within eight (8) hours from when the incident is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) Employers shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident which results in the following:

(a) An amputation suffered by an employee; [or]

(b) An employee's loss of an eye; or

(c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.

(4) The report required under subsection (3) of this section shall be made within seventy-two (72) hours from when the incident is reported to the employer, the employer's agent, or

another employee.

(5) The requirement to report the loss of an eye under subsection (3)(b) of this section shall be effective January 1, 2016.

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1904 and updates the C.F.R. to July 1, 2014. Section 2 also establishes the amendments to 29 C.F.R. 1904 published in the September 18, 2014 Federal Register, Volume 79, Number 181. Section 3 amends and replaces the requirements of 29 C.F.R. 1904.39 with state-specific reporting occupational injuries and illnesses that have been in effect since 2006. With the September 18, 2014 final rule OSHA is updating the list of industries that are no longer exempted from the recordkeeping requirements; thereby, requiring many employers to maintain the recordkeeping information for the first time. Because of this the Kentucky OSH Program has contacted the employers that are newly required to maintain these forms through their North American Industrial Classification code. These employers were contacted via workers' claims databases and over 2,200 postcards were mailed giving potentially affected employers information on the changes. Additionally, classroom training is being conducted throughout the Commonwealth at multiple population training centers and electronic training is available on our website. The amendments to Section 3 of the regulation are also related to the 2014 final rule, which amends a state-specific requirement for reporting occupational injuries and illnesses, by adding language requiring employers to report an employee's work-related loss of eye to the Kentucky OSH Program. Language was also added to define the term "loss of eye" in Section 1. The Kentucky OSH Program believes this type of injury was captured with Kentucky's previous rule, but to maintain consistency with the Federal OSH Program, Kentucky needed to amend this part of the state specific reporting requirement. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the September 18, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regulation. The

amendments to Section 3 of the regulation require employers to report to the Kentucky OSH program when an employee experiences a work-related loss of an eye. This change to the reporting requirement makes Kentucky's state-specific reporting requirements as stringent as the new federal reporting requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The recordkeeping and reporting regulation enhances worker safety throughout Kentucky by maintaining a useful database of injuries and illnesses and keeps the state occupational safety and health program at least as effective as the federal.

(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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1904. Section 2 also updates the C.F.R. to July 2014 and establishes the amendments to 29 C.F.R. 1904 published in the September 18, 2014 Federal Register, Volume 79, Number 181. The amendments in the Federal Register change the list of employers who are exempted from the recordkeeping requirements. Section 3 of the regulation replaces the 29 C.F.R. 1904.39 reporting requirements with Kentucky state-specific requirements. This section was amended to include reporting the loss of an eye to maintain reporting requirements that are as stringent as the federal requirements. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the September 18, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regulation. The amendments to Section 3 of the regulation require employers to report to the Kentucky OSH program when an employee experiences a work-related loss of an eye. This change to the reporting requirement makes Kentucky's state-specific reporting requirements as stringent as the new federal reporting requirement.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. This amendment also conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. The recordkeeping and reporting regulation ensures that data collected in Kentucky are useful in comparing illness and injury incident rates to those nationally.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(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. Additionally, the amendments will also require employers to report any work-related loss of eye in addition to the hospitalizations and fatalities that

were already required by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates that it will cost each employer approximately eighty-two (82) dollars per year if they are newly required to maintain occupational injury and illness logs. There should be no new costs associated with the change to the reporting requirements as Kentucky's reporting requirements have been in place since 2006.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted/state and federal funding.

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. This amendment requires employers to comply with the recordkeeping requirements of 29 C.F.R. 1904 for recording occupational injuries and illnesses. Additionally, Kentucky's state-specific reporting requirement is amended to include reporting the loss of an eye.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the September 18, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal recordkeeping requirements in Section 2 of the regulation. The amendments to Section 3 of the regulation require employers to report to the Kentucky OSH program when an employee experiences a work-related loss of an eye. This change to the reporting requirement makes Kentucky's state-specific reporting requirements as stringent as the new federal reporting requirement.

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 poses different requirements than the federal mandate in Sections 1 and 3, in that the definition of amputation and injury reporting times are different, but this difference is not stricter than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement to report occupational hospitalizations, amputations, and fatalities has been in place since 2006. The additional requirement to report the loss of eye aligns the reporting

requirements with 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? OSHA estimates that it will cost an average of eighty-two (82) dollars to implement the changes for each employer who is newly required to record injuries and illnesses. There are no associated costs related to the reporting revisions as the reporting requirements have been in place since 2006.

(d) How much will it cost to administer this program for subsequent years? OSHA also estimates the cost to remain around eighty-two (82) dollars for each subsequent year only for those newly required to maintain the records that every other industry has maintained for years. There are no associated costs related to the reporting revisions as the reporting requirements have been in place since 2006.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Eighty-two (82) dollars for affected employers

Other explanation:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:200. Confined spaces in construction[space entry].

RELATES TO: 29 C.F.R. 1926.1200-1926.1213[KRS 338.051, 338.061]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1200 to 1926.1213 establish federal safety and health requirements related to confined spaces in construction. This administrative regulation establishes general safety and health standards to be enforced by the Department of Workplace Standards in the area of construction.[Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in

the course of their employment.]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart AA, Confined Spaces in Construction, published in the May 4, 2015 Federal Register, Volume 80, Number 85. "Confined space" means a space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, or depletion of oxygen.

(2) "Emergency entry" means entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) "Toxic air contaminants" means those substances listed in Subpart Z of 29 C.F.R. 1910 as adopted by 803-KAR-2:320; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) "Lower explosive limit (LEL)" means the minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) "Zero mechanical state (ZMS)" means the mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shutoff valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by

the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) "Agricultural production operation" means establishments engaged primarily in the production of crops or livestock.

Section 2. Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section 1(1) of this administrative regulation, which are not specifically covered by other administrative regulations adopted by this chapter, such as in the construction industry standards, 29 C.F.R. Part 1926.

(2) This administrative regulation does not apply to agricultural production operations.

(3) This administrative regulation does not apply to employers in general industry who are covered by 29 C.F.R. 1910.146, "Permit-required Confined Spaces", as adopted by 803 KAR 2:309.

(4) This administrative regulation does not preempt any specific applicable regulation.

Section 3. Confined Space Entry: Nonemergency and Nonrescue. Except as provided in Section 4 of this administrative regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 C.F.R. 1910, Subpart Z as adopted by 803 KAR 2:320, and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protection. Respirator usage shall be in accordance with the requirements of 29 C.F.R. 1910.134 as adopted by 803 KAR 2:308. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including

rescue equipment and rescue training, as outlined in Section 4 of this administrative regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

- (a) An assessment of the hazard(s);
- (b) Personnel required to perform the rescue or emergency entry;
- (c) Precautions to be taken while in the confined space;
- (d) Personal protective equipment to be used;
- (e) Rescue equipment such as but not limited to respirators, life lines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and
- (f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.]

LARRY ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 C.F.R. 1926 Subpart AA and establishes the federal requirements as published in the May 4, 2015 Federal Register, Volume 80, Number 85. These amendments were adopted by the Kentucky OSH Standards board Chairperson. As a result of the adoption of this final rule 803 KAR 2:200 must be amended to include the adopted changes. The May 4, 2015 final rule is amending the confined space in construction requirements for all employers engaged in applicable construction work. The entire final rule places new requirements on employers when entering permit

required confined spaces to include training, performing air monitoring, and evaluating and creating a written program for permit confined space entry. The final rule amends this KAR by removing Kentucky's existing state specific confined space in construction requirements and adopting the new federal requirements in entirety. The requirements in OSHA's final rule were more stringent and thorough than Kentucky's existing regulation which meant the Kentucky OSH Program must either adopt the federal requirements or amend the current Kentucky administrative regulation. The requirements in this final rule are much like those that are already enforced for general industry employers under 803 KAR 2:309, with a few exceptions. Like the general industry rule, the construction rule, requires employers to develop written procedures, create and maintain a permit entry system, train employees on the aspects of their assigned roles, and prepare for the need for rescue. Unlike the general industry rule, the construction rule sets forth detailed requirements for sharing information as there are typically multiple employers on construction sites. The construction rule also requires the designation of a competent person, continuous atmospheric monitoring as well as continuous monitoring for engulfment hazards. Additionally, the construction industry final rule requires employer to completely cancel a permit when unexpected hazards are found in the confined space. There were also a few small changes to this construction industry rule to clarify some questions that had been raised with the general industry rule, this includes: clarifying alternate entry procedures, ensuring that third party rescue teams are available during entry, and defining terms that were not common to the general industry rule. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 2 updates the C.F.R. to July 1, 2014 and creates a new Subpart AA in 29 C.F.R. 1926 as published in the May 4, 2015 Federal Register. This new Subpart sets forth requirements related to the entry of confined spaces in construction. The adoption of this rule requires the OSH Program to eliminate the pre-existing state-specific requirements and replace it with the federal requirements. As a result of the adoption of this final rule 803 KAR 2:200 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015.

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

the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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: Employers will be required to evaluate confined spaces, develop appropriate written programs, permits, and entry procedures, and train employees on the appropriate work practice controls to achieve safe permit- confined space entry.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No information was available specific to this state, but overall the implementation of these requires is expected to cost employers \$60.3 million while benefitting employers in the amount of \$93.6 million.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the May 4, 2015 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program 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: Current state and federal funding.

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments to 803 KAR 2:200 were all adopted by the Kentucky OSH Standards Board Chairperson to ensure promulgation of the regulation within six months.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R.

Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments to 803 KAR 2:200 were all adopted by the Kentucky OSH Standards Board Chairperson to ensure promulgation of the regulation within six months.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate. The amendments to the regulation actually remove pre-existing state-specific requirements that were stricter than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? The May 4, 2015 final rule will have a total annualized cost of \$ 60.3 million and a benefit of \$93.6 million with a total net benefit of 33.3 million annually. No information was specific to local governments.

(d) How much will it cost to administer this program for subsequent years? The May 4, 2015 final rule will have a total annualized cost of \$ 60.3 million and a benefit of \$93.6 million with a total net benefit of 33.3 million annually. No information was specific to local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was specific to local governments.

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:250. Discrimination.

RELATES TO: KRS 338.121[Chapter 338]

STATUTORY AUTHORITY: KRS 338.051[337.295]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 requires the Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This administrative regulation sets forth the procedure for discrimination complaints pursuant to KRS 338.121[KRS 338.121 prohibits employers from discriminating against any employee for involvement in an occupational safety and health investigation, complaint or related activity. The statute further requires the Commissioner of the Department of Workplace Standards, Kentucky Department of Labor, to investigate complaints of discrimination, determine whether a violation has occurred and issue a citation to an offending employer. The Kentucky Occupational Safety and Health Review Commission is empowered by KRS 338.121 to order all appropriate relief including reinstatement of the employee to his former position with back pay. The function of this administrative regulation is to set out the procedure to be followed by the commissioner upon receipt of a complaint alleging a violation of this statute].

Section 1. Definitions.[Unless defined herein, all definitions will be as defined in 803 KAR 50:010 and KRS 338.015.] (1) "Commissioner" is defined by KRS 338.015(7) ["Secretary" means Secretary of the Labor Cabinet].

(2) "Complainant" means any person who makes a complaint as defined in subsection (3) of this section["Commissioner" means the Commissioner of the Department of Workplace Standards under the direction and supervision of the Secretary of the Labor Cabinet].

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency; or made to the commissioner or his designee.

(4) "Secretary" is defined by KRS 338.015(12) [(3) "Affected employee" means any employee discharged or otherwise discriminated against by any person because such employee has filed a complaint or has participated or testified, or is about to participate or testify in any investigation with the Labor Cabinet or proceeding before the Review Commission.

(4) "Prohibited activity" means a wrongful discharge of an employee on the basis of his/her filing a complaint or participation in any investigation instituted by the Labor Cabinet or any proceeding before the Review Commission or any other discriminatory action such as but not limited to suspensions, written reprimands, demotions in positions taken against the employee for the above stated activities or for exercising any right afforded under KRS Chapter 338].

Section 2. Procedure for Complaint to the Commissioner[Complaints]; Recipient of; Time for Filing; Form of Complaints. (1) An[Any] employee or former employee may file an oral or written[a] complaint alleging[of] discrimination[of-protected activity] with the commissioner or his designee.[Such complaint may be made orally or in writing.]

(2) A complaint[Complaints] shall be filed no more than[within] 120 days from[of] the occurrence of the alleged discriminatory[violation of protected] activity.

(3) A complaint[Complaints] shall state the name and address of the complainant[affected employee], name and address of employer, and description of alleged discrimination[violation].

(4) Notification shall be given to the employer of the receipt by the commissioner of a complaint within five (5) working days.

Section 3. Settlement. Settlement is encouraged at any stage

of the proceedings ~~if the~~^{where such} settlement is consistent with the provisions and objectives of KRS Chapter 338~~[the Act]~~. Primary consideration ~~shall~~^{will} be the reinstatement of a ~~complainant~~^{employee} to ~~his or her~~ former position with back pay and assurance of the future protection of the rights of all employees under KRS Chapter 338.

Section 4. Withdrawal of Complaint ~~to the Commissioner~~. ~~A~~^{Any} request by ~~the complainant~~^{an employee} to withdraw a complaint filed with the commissioner ~~shall~~^{will} be given substantial weight; however, the commissioner ~~shall~~^{will} make the final determination ~~if~~^{as to whether} a complaint and subsequent investigation ~~may~~^{will} be terminated.

Section 5. Arbitration or Other Agency Proceedings. (1) ~~A complainant may pursue~~^{An employee who files a complaint under KRS 338.121(3) may also pursue remedies under} grievance arbitration proceedings in collective bargaining agreements ~~while requesting relief from other agencies~~^{in addition, the complainant may concurrently resort to other agencies for relief}; such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to ~~receive~~^{entertain} KRS 338.121(3) complaints, to investigate, and to determine whether discrimination has occurred ~~shall be~~^{is} independent of the jurisdiction of other agencies or bodies.

(3) The commissioner may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) ~~If~~^{(2) Where} a complainant is pursuing remedies[;] other than those provided by KRS 338.121,^{postponement of} the commissioner's determination and deferral to the results of ~~the~~^{such} proceedings may be ~~postponed~~^{made}.

Section 6. Investigation of Complaint ~~to the Commissioner~~; Issuance of Citation; Notice to Parties; Right of Review. (1) Upon receipt of a complaint under Section 2 of this administrative regulation, the commissioner shall cause an investigation to be instituted. ~~The~~^{Such} investigation shall be completed and the commissioner's determination issued within^{a reasonable time, but not to exceed} ninety (90) days, absent extenuating circumstances.

(2) If the commissioner finds a violation of KRS 338.121, ~~he or she~~ shall issue a citation and ~~recommend a~~^{recommended} penalty. The citation shall include a determination by the commissioner as to the merits of the alleged violation.

(3) Notice of the determination shall be given to all affected parties.

(4) ~~If~~^{In the event} the commissioner determines there has been no discriminatory action, ~~the complainant shall be notified of his or her rights of review of the determination. The complainant~~^{employee} may petition the secretary for a review of the determination. ~~The~~^{Such} petition shall be in writing and state reasons why ~~the~~ review is requested. The secretary shall affirm the determination or remand it to the commissioner for further investigation.

Section 7. Employer Contest. ~~A~~^{Any} citation and notice of proposed penalty shall state that it shall be deemed^{to be} the final order of the Review Commission and not ~~be~~ subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of ~~the~~^{such} notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that ~~the employer~~^{he} intends to contest the citation and notification of proposed penalty before the Review Commission. Within seven (7) days of receipt of contest, the commissioner ~~shall~~^{will} forward copies of the citation and proposed penalty and notice of contest to the Review Commission.

Section 8.~~Receipt by Review Commission of Citation and Notice of Contest. Proceedings under 803 KAR 50:010(1). Upon receipt by the commission of the citation and proposed penalty and employer's notice of contest, the commission shall institute proceedings in compliance with the applicable rules as adopted by the Review Commission in 803 KAR 50:010.~~

Section 9.] Proposed Penalties. (1) ~~When a citation is issued~~^{Concurrent with the issuance of a citation}, the commissioner shall notify the employer by certified mail of the proposed penalty ~~established in~~^{under} KRS 338.991.

(2) The commissioner shall determine the amount of ~~a~~^{any} proposed penalty, ~~based on~~^{giving due consideration to} the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(3)~~Appropriate~~ Penalties shall be proposed with respect to an alleged discriminatory act even ~~if~~^{though after being informed of such alleged violation by the commissioner,} the employer immediately abates, or initiates steps to abate, ~~the~~^{such} alleged violation.

Larry L. Roberts, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the statute. Sections 2-8 set forth the administrative procedures for discrimination complaints pursuant to Kentucky Revised Statutes 338.121. The amendments to the regulations were in response to a 2015 appeals court decision, which ruled the Kentucky OSH Program discrimination protections did not extend to employees making OSH complaints to their employer. The revisions to this regulation clarify that the regulation, in alignment with the federal mandate, recognizes employee to employer complaints. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Kentucky does not have an effective alternative to OSHA's discrimination regulation which recognizes employee to employer complaints under 29 Code of Federal Regulations 1977.9. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must amend the regulation to clarify that employee to employer complaints are protected within the scope of 803 KAR 2:250. OSHA is aware of the appeals court decision and issued the Kentucky OSH Program a letter recognizing the failure of the Program to meet the federal mandate in this specific area of discrimination enforcement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures to address discrimination as set forth by KRS 338.121.

(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: Section 1 defines terms that are not addressed within the statute and ensures the term "complaint" addresses employee to employer complaints. The amendments to Sections 2-8 updates the process for handling discrimination complaints and updates the language to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Kentucky does not have an effective alternative to OSHA's discrimination regulation which recognizes employee to employer complaints under 29 Code of Federal Regulations 1977.9. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must amend the regulation to clarify that employee to employer complaints are protected within the scope of 803 KAR 2:250. OSHA is aware of the appeals court decision and issued the Kentucky OSH Program a letter recognizing the failure of the Program to meet the federal mandate in this specific area of discrimination enforcement.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(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 KAR will not impose any compliance requirements of employers. The amendment simply clarifies that complaints include those made by an employee to the employer.

(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 cost associated with the amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted/state and federal funding.

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The amendments to this administrative regulation clarify what constitutes a complaint thereby aligning the Kentucky OSH Program's discrimination requirements with the federal requirements set forth by 29 C.F.R. 1977.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Kentucky does not have an effective alternative to OSHA's discrimination regulation which recognizes employee to employer complaints under 29 Code of Federal Regulations 1977.9. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must amend the regulation to clarify that employee to employer complaints are protected within the scope of 803 KAR 2:250. OSHA is aware of the appeals court decision and issued the Kentucky OSH Program a letter recognizing the failure of the Program to meet the federal mandate in this specific area of discrimination enforcement.

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 poses different requirements that those in the federal mandate as it relates to the time to file a complaint and Kentucky's specific procedures for handling discrimination complaints. These requirements have been in effect for over twenty (20) years. The amendment to this regulation is required to align the discrimination program to the federal requirements set forth by 29 C.F.R. 1977.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation poses different requirements that those in the federal mandate as it relates to the time to file a complaint. This requirement has been in effect for over twenty (20) years. The amendment to this regulation is required to align the discrimination program to the federal requirements set forth by 29 C.F.R. 1977.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 are no additional costs expected from the amendment to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs expected from the amendment to this 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: There are no costs to employer expected from the amendment to this administrative regulation.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.66-1910.68

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.66-1910.68 establishes federal requirements relating to powered platforms, manlifts, and vehicle-mounted work platforms. This administrative regulation establishes the powered platforms, manlifts, and vehicle-mounted work platform standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.66-1910.68 and Appendices, revised July 1, 2014; and

(2) The amendments to 29 C.F.R. 1910.67 as published in the July 1, 2014 Federal Register, Volume 79, Number 126[2008].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2014 and adopts the amendments published in the July 1, 2014 Federal Register, Volume 79, Number 126. The Kentucky OSH Standards Board adopted these amendments on May 5, 2015. As a result of the adoption of the aforementioned amendments, 803 KAR 2:305 must be amended to include the adopted changes. With the July 1, 2014 correcting amendments, OSHA is amending typographical errors in the vehicle mounted elevating and rotating work platform standard. The current requirement references an incorrect national consensus standard organization and this is changed by the adoption of these correcting amendments with the correct reference. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments in the July 1, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:305 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and adopts the amendments published in the July 1, 2014 Federal Register, Volume 79, Number 126. The Kentucky OSH Standards Board adopted these amendments on May 5, 2015. The amendments specific to this KAR correct an existing standard and do not set forth new requirements of employers. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to the July 1, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:305 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes

worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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 compliance duties are expected from the corrections made in the July 1, 2014 Federal Register.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to the July 1, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendment to 803 KAR 2:305 was adopted by the Kentucky OSH Standards Board on May 05, 2015.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to the July 1, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was

not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendment to 803 KAR 2:305 was adopted by the Kentucky OSH Standards Board on May 05, 2015.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Neither this administrative regulation nor the amendment to the regulation poses stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither this administrative regulation nor the amendment to the regulation poses stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 are no costs associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the amendment of this regulation.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.261-1910.272

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.261 to 1910.272 establish the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace

Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.261-1910.272, revised July 1, 2014;

(2) The amendments to 29 C.F.R. 1910.269 as published in the September 24, 2014 Federal Register, Volume 79, Number 185; and

(3) The amendment to 29 C.F.R. 1910.266 as published in the July 1, 2014 Federal Register, Volume 79, Number 126[2013];

~~(2) The amendment to 29 C.F.R. 1910.261 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215; and~~

~~(3) The amendments to 29 C.F.R. 1910.269 and Appendices as published in the April 11, 2014 Federal Register, Volume 79, Number 70].~~

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2014 and adopts the amendments published in the July 1, 2014 Federal Register, Volume 79, Number 126 as well as the amendment published in the September 24, 2014 Federal Register, Volume 79, Number 185. The Kentucky OSH Standards Board adopted these amendments on May 5, 2015. As a result of the adoption of the aforementioned rules, 803 KAR 2:317 must be amended to include the adopted changes. With the September 24, 2014 Federal Register, OSHA is amending the electrical power generation, transmission, and distribution requirements by correcting errors made in the text of the regulation as well as some reference tables that were not caught when changing the rule in April of 2014. Because of confusing wording in the preamble, OSHA is amending the decision making flow chart in Appendix A-2 of 1910.269, which refers to the definition of a "qualified" employee

under 1910.399 instead of the definition in 1910.269. There are also numerous technical and typographical errors to the footnotes in multiple tables throughout the regulation. The amendments in this Federal Register also correct the regulatory text in 1910.269 where the ladder strength requirement for portable ladders was inadvertently dropped. This federal register restores that requirement. There were also minor and typographical amendments made to the construction standards in Subpart V of 1926 to include correcting equations and removing erroneous references. With the July 1, 2014 Federal Register, OSHA is also making correcting amendments, but to 29 C.F.R. 1910.266. A requirement in the logging standard made an incorrect reference to the vehicle mounted elevating and work platform standard. This Federal Register corrects that reference. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to both the July 1, 2014 and September 24, 2014 Federal Register amendments did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:317 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and adopts the amendments published in the July 1, 2014 Federal Register, Volume 79, Number 126 as well as the amendment published in the September 24, 2014 Federal Register, Volume 79, Number 185. The Kentucky OSH Standards Board adopted these amendments on May 5, 2015.

Both Federal Registers correct existing standards and do not set forth new requirements of employers. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to both the July 1, 2014 and September 24, 2014 Federal Register amendments did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:317 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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 compliance duties are expected from the corrections made in either Federal Register.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendments require no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to both the July 1, 2014 and September 24, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:317 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of a final rule. The amendments related to both the July 1, 2014 and September 24, 2014 Federal Register amendments did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal

program, the amendments to 803 KAR 2:317 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

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 requirements in addition to the federal mandate. The amendments to the regulation do not impose stricter 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 requirements in addition to the federal mandate. The amendments to the regulation do not impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 are no costs associated with either of the related-amendments of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with either of the related-amendments of this regulation as the amendments only correct mistakes in the regulations and do not require additional compliance duties of an employer.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The amendments specific to this regulation are not expected to create any additional costs to the entities affected.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:402. General safety and health provisions.

RELATES TO: 29 C.F.R. 1926.20-1926.30, 1926.35

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.20 to 1926.30 and 1926.32 to 1926.35 establish federal safety and health requirements relating to construction. This administrative regulation

establishes general safety and health standards to be enforced by the Department of Workplace Standards in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements~~[regulations]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.20-1926.30 and 1926.32-1926.35, revised July 1, 2014~~[2010]~~; and

(2) The amendments to 29 C.F.R. 1926.21 as published in the May 4, 2015 Federal Register, Volume 80, Number 85~~[29 C.F.R. 1926.31 is removed and reserved as published in the August 9, 2010 Federal Register, Volume 75, Number 152]~~.

LARRY ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 1, 2014 and establishes the amendments to 29 C.F.R. 1926.21, as published in the May 4, 2015 Federal Register, Volume 80, Number 85. The amendments to this standard were adopted by the OSH Standards Board Chairperson to ensure promulgation within the required six month time period. As a result of the adoption of this final rule 803

KAR 2:402 must be amended to include the adopted changes. The May 4, 2015 final rule is amending the confined space in construction requirements for all employers engaged in applicable construction work. The entire final rule places new requirements on employers when entering permit required confined spaces to include training, performing air monitoring, and evaluating and creating a written program for permit confined space entry. The final rule amends this KAR by removing existing confined space requirements in the federal rule under 29 C.F.R. 1926.21(b)(6). Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments to 803 KAR 2:402 were all adopted by the Kentucky OSH Standards Board Chairperson to ensure prompt promulgation of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 2 updates the C.F.R. to July 1, 2014 and establishes the amendments to 29 C.F.R. 1926 published in the May 4, 2015 Federal Register, which removes existing confined space requirements and creates an entirely new Subpart to address confined space hazards. As a result of the adoption of this final rule 803 KAR 2:402 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments to 803 KAR 2:402 were all adopted by the Kentucky OSH Standards Board Chairperson.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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: Because

the amendment to this specific regulation simply removes existing confined space requirements, there will be no impact to employers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment to this specific regulation simply removes existing confined space requirements, there will be no impact to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the May 4, 2015 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(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 is no cost to implement this regulation on a continuing basis.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendment to 803 KAR 2:402 was adopted by the Kentucky OSH Standards Board Chairperson to ensure prompt promulgation of the regulation.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendment to 803 KAR 2:402 was adopted by the Kentucky OSH Standards Board Chairperson to ensure prompt promulgation of the regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Neither the regulation nor the amendments to the regulation impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither the regulation nor the amendments to the regulation impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? The May 4, 2015 final rule will have a total annualized cost of \$ 60.3 million and a benefit of \$93.6 million with a total net benefit of 33.3 million annually. No information was specific to local governments.

(d) How much will it cost to administer this program for subsequent years? The May 4, 2015 final rule will have a total annualized cost of \$ 60.3 million and a benefit of \$93.6 million with a total net benefit of 33.3 million annually. No information was specific to local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was specific to local governments.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

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

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.950 – 968

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards. ~~This~~~~[The following]~~ administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the

Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.950-1926.967, revised as of July 1, 2014;[2013; and]

(2) The amendments to Subpart V of 29 C.F.R. 1926 as published in the September 24, 2014 Federal Register, Volume 79, Number 185; and

(3) The amendments to Subpart V of 29 C.F.R. 1926 as published in the May 4, 2015 Federal Register, Volume 80, Number 85[April 11, 2014 Federal Register, Volume 79, Number 79].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and establishes the amendments to Subpart V of 1926 as published in the September 24, 2014 Federal Register, Volume 79, Number 185 and in the May 4, 2015 Federal Register, Volume 80, Number 85. The Kentucky OSH Standards Board adopted the September 24, 2014 Federal Register amendments on May 5, 2015 and the Chair adopted the May 4, 2015 amendments to ensure prompt promulgation. As a result of the adoption of the aforementioned amendments, 803 KAR 2:421 must be amended to include the adopted changes. With the September 24, 2014 Federal Register, OSHA is amending the electrical power generation, transmission, and distribution requirements by correcting errors made in the text of the regulation as well as some reference tables that were not caught when changing the rule in April of 2014. Because of confusing wording in the preamble, OSHA is amending the decision making flow chart in Appendix A-2 of 1910.269, which refers to the definition of a "qualified" employee under 1910.399 instead of the definition in 1910.269. There are also numerous technical and typographical errors to the footnotes in multiple tables throughout the regulation. The amendments in this Federal Register also correct the regulatory text in 1910.269 where the ladder strength requirement for portable ladders was inadvertently dropped. This federal register restores that requirement. There were also minor and typographical amendments made to the construction standards in Subpart V of 1926 to include correcting equations and removing erroneous references. The May 4, 2015 final rule creates new requirements of employers to protect employees entering permit required confined spaces in the construction industry. The requirements in this final rule are much like those that are already enforced for general

industry employers under 803 KAR 2:309, with a few exceptions. Like the general industry rule, the construction rule, requires employers to develop written procedures, create and maintain a permit entry system, train employees on the aspects of their assigned roles, and prepare for the need for rescue. Unlike the general industry rule, the construction rule sets forth detailed requirements for sharing information as there are typically multiple employers on construction sites. The construction rule also requires the designation of a competent person, continuous atmospheric monitoring as well as continuous monitoring for engulfment hazards. Additionally, the construction industry final rule requires employer to completely cancel a permit when unexpected hazards are found in the confined space. There were also a few small changes to this construction industry rule to clarify some questions that had been raised with the general industry rule, this includes: clarifying alternate entry procedures, ensuring that third party rescue teams are available during entry, and defining terms that were not common to the general industry rule. The specific amendments within this KAR are related to the entry of enclosed spaces in the power transmission, and generation industry and the definition of this term. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments related to the September 24, 2014 Federal Register amendments did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the federal program, the amendments to 803 KAR 2:421 were adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and establishes the amendments to Subpart V of 1926 as published in the September 24, 2014 Federal Register, Volume 79, Number 185 and in the May 4, 2015 Federal Register, Volume 80, Number 85. The amendments in the September 24, 2014 Federal Register simply correct mistakes made during the publishing of a final rule in April 2014 related to electrical power generation, transmission, and distribution. These corrections do not place additional compliance requirements on the employer. The amendments related to May 4, 2015 final rule, amend language adopted by this KAR related to entrance into enclosed spaces and the definition of an enclosed space. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal

program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments related to the September 24, 2014 Federal Register amendments did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to maintain consistency with the Federal program, the amendments to 803 KAR 2:421 were all adopted by the Kentucky OSH Standards Board on May 05, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 compliance duties are expected from the revisions to Subpart V as set forth in the September 24, 2014 Federal Register. The amendments in the May 4, 2015 Federal Register specific to this KAR are not extensive and only clarify duties during entry into enclosed spaces which are specifically defined within Subpart V of 1926.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendments require no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

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

Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments related to the September 24, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:421, related to the September 24, 2014 Federal Register were adopted by the board on May 5, 2015. The amendments in the May 4, 2014 Federal Register were adopted by the Kentucky OSH Board Chairperson to ensure promulgation of the regulation within six months.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 4, 2015 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 4, 2015. The amendments related to the September 24, 2014 Federal Register did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:421, related to the September 24, 2014 Federal Register were adopted by the board on May 5, 2015. The amendments in the May 4, 2014 Federal Register were adopted by the Kentucky OSH Board Chairperson to ensure promulgation of the regulation within six months.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Neither the regulation nor the amendments to the regulation impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither the regulation nor the amendments to the regulation impose stricter 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 are no costs associated with either of the related-amendments of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with either of the related-amendments of this regulation.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

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

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. This [The following] administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441 revised July 1, 2014; and [2013;]

(2) The amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187 [1926.1400 published in the May 29, 2013 Federal Register, Volume 78, Number 103; and

(3) ~~The amendments to 29 C.F.R. 1926.1400 and 1926.1410 published in the April 11, 2014 Federal Register, Volume 79, Number 70].~~

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are

on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level."

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 12, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and establishes the amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187. Section 3 is a Kentucky specific requirement that amends the federal requirement for trigger heights when working from a crane. This Kentucky specific requirement has been in effect since 2011. The Kentucky OSH Standards Board adopted these amendments on May 5, 2015. As a result of the adoption of the aforementioned final rule, 803 KAR 2:505 must be amended to include the adopted changes. The final rule will amend 1926.1427(k)(1)) to extend the crane operator certification requirement by three years and 1926.1427(k)(2)(iii) to ensure operators are competent and have the ability and knowledge to operate a crane safely. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 05, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2014 and establishes the amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187. This amends 1926.1427(k)(1)) to extend the crane operator certification requirement by three years and 1926.1427(k)(2)(iii) to ensure operators are competent and have the ability and knowledge to operate a crane safely. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 05, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 compliance duties are expected from the revisions to 1926.1427 as set forth in the September 26, 2014 Federal Register. This amendment will extend crane operator certification by three years and the employer duty to ensure crane operators are competent. The amendments in the September 26, 2014 Federal Register will not impact business.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no new costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no new cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

Current state and federal funding.

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 05, 2015.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 05, 2015.

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, additional, or different requirements or responsibilities than those required by the federal standards. Section 3 of this administrative regulation does impose stricter requirements than those required by the federal mandate. Section 3 is a Kentucky specific requirement that amends the federal requirement for trigger heights when working from a crane. This Kentucky specific requirement has been in effect since 2011.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 is a Kentucky specific requirement that amends the federal requirement for trigger heights when working from a crane. This Kentucky specific requirement has been in effect since 2011.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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 are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the September 26, 2014 final rule extending the crane operator certification by three years and extending the employer duty to ensure crane operators are competent to operate a crane nor the final rule related to the September 26, 2014 Federal Register.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

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

804 KAR 4:390. License renewals.

RELATES TO: KRS 243.090(1)

STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Department of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. This administrative regulation establishes the system for license renewal.

Section 1. Definition. "Batch renewal" means the simultaneous renewal of multiple licenses held by a licensee for more than two (2) premises.

Section 2. All licenses in Ballard, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trigg, Trimble, Union, and Webster Counties shall renew in the month of January.

Section 3.[2.] All licenses in Adair, Allen, Barren, Bath, Bell, Boyle, Breathitt, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd, Garrard, Harlan, Harrison, Hopkins, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Logan, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Owsley, Perry, Powell, Pulaski, Rockcastle, Russell, Simpson, Taylor, Todd, Warren, Washington, Wayne, and Whitley Counties shall renew in the month of April.

Section 4.[3.] All licenses in Anderson, Bourbon, Boyd, Bracken, Carroll, Carter, Franklin, Gallatin, Grant, Greenup, Henry, Lewis, Mason, Nicholas, Oldham, Pendleton, Pike, Robertson, Rowan, Scott, Shelby, Wolfe, and Woodford Counties shall renew in the month of June.

Section 5.[4.] All licenses in Jefferson County shall renew in the month of October.

Section 6.[5.] All licenses in Boone, Campbell, Fayette, and Kenton Counties shall renew in the month of November.

Section 7.[6.] The license of a statewide or out-of-state licensee shall renew in December.

Section 8.[7.] All batch renewals shall renew in August.

Section 9.[8.] Unless a licensee notifies the department of its intent to renew premises licenses by batch~~[separately]~~ as provided in Section 10~~[Sections 1 through 6]~~ of this administrative regulation, a licensee that holds multiple licenses~~[a group license]~~ that cover~~[covers]~~ multiple premises shall renew its licenses using the license expiration date based on the county of each premises~~[at the same time]~~.

Section 10. A licensee that holds multiple licenses for more than two (2) premises shall be permitted to renew the licenses by batch at the same time. A licensee who wants to renew premises by batch shall notify the department in writing. Upon written notification,~~[9. If a licensee that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premises separately.]~~ the licenses shall then be renewed in August~~[using the license expiration date based on the county of each premises], as provided in Section 8~~~~[Sections 1 through 5]~~ of this administrative regulation.

Section 11.[40.] A licensee that holds multiple licenses for more than two (2) premises~~[more than one (1) license]~~ shall not be required to send a letter requesting that its licenses be renewed separately~~[or in a batch]~~ unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch.

Section 12. All small farm winery, microbrewery, and Class B Craft distiller's licensees shall submit required production reports with their renewal application forms. Small farm wineries shall submit copies of their federal Report of Wine Premises Operation, TTB F 5120.17, for time periods identified on renewal application forms. Microbreweries shall submit copies of their federal Brewer's Report of Operations, TTB F 5130.9, for time periods identified on renewal application forms. Class B Craft Distilleries shall submit copies of their federal Monthly Report of Production Operations, TTB F 511.40, for time periods identified on renewal application forms.

Section 13. The Department may elect to not renew a license if the licensee exceeds a production limit for its license type or fails to meet food sales percentages required for its license type, or if renewal of the license would otherwise be contrary to law.

Section 14. If a licensee fails to renew its license prior to the expiration date, the department shall grant not more than one (1) extension which shall not exceed thirty (30) days from the original expiration date. The licensee shall not conduct any activity related to alcoholic beverages during the extension. A license not renewed during the thirty (30) day extension period shall not be renewed thereafter for any reason and the licensee shall reapply for a new license.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2015 at 1:00 p.m. Eastern Time 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 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 the end of the day on July 31, 2015. 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth a system for year-round renewals of alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 243.090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.090 requires the department to establish a year-round system of license renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation assists the department by distributing the workload of license renewals throughout the calendar year.

(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 specifies what documents are required to be submitted with the renewal application, as well as what conditions may result in non-renewal of a license and grants licensees a courtesy extension period to renew their licenses without having to reapply.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes as well as to codify department policy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment continues the system of year-round license renewals and it will also assist the department in determining which licenses may or may not be renewed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment continues the department's distribution of license renewal throughout the calendar year, as required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will be affected by this 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: The licensees will have to ensure that they are in compliance with the statutory requirements which pertain to their license in order for their license to be renewed.

(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 expected to be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

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

(b) On a continuing basis: None.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

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 is no expected impact on any unit, part or division of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.090 requires the department to establish a year-round system of license renewal.

(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 are not expected to increase. No revenue will be generated by this administrative regulation.

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

(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 Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS 318.130, 318.150, 42 U.S.C. 300g-6(d)(2)
STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the quality and weight of material. This administrative regulation establishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use.

Section 1. Definitions~~[Definition of Terms]~~. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASTM" means American Society for Testing and Materials and copies of specifications identified in this administrative regulation can be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) "CISPI" means the Cast Iron Soil Pipe Institute and copies of specifications identified in this administrative regulation can be obtained by writing the Cast Iron Soil Pipe Institute, 5959 Shallowford Road, Suite 419, Chattanooga, TN 37421.

(4) "Lead" means solders and flux containing more than two-tenths (0.2) percent lead and the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures containing more than a weighted average of one quarter (0.25) percent lead as calculated according to the formula established in 42 U.S.C. 300g-6(d)(2).

(5) "PVC" means polyvinyl chloride.

Section 2. Quality of Materials. The material used in a drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast, or Stamped. Each length of pipe, fitting, trap, fixture, or device used in a plumbing or drainage system shall be stamped or indelibly marked with the:

(1) Weight or quality; and

(2) Maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe, and extra heavy SDR 35 sewer piping shall be produced, labeled, and used only as established in subsections (1) through (4) of this subsection. (1) Vitrified clay pipe shall be as established in ASTM C-700.

(2) Concrete pipe shall be as established in ASTM C-14.

(3) Truss pipe shall be as established in ASTM D-2680. Solid wall truss pipe shall be as established in ASTM D2751.

(4) Extra heavy SDR 35 sewer piping shall be as established in ASTM D-3033-74 and D-3034-74.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as ASTM A74.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as ASTM A74 and C1563.

(3) No-hub cast-iron and fittings shall be produced and labeled ASTM 888 or CISPI 301.

(4) No-hub couplings shall be produced and labeled as ASTM C1277, C564, C1563, or CISPI 310.

(5) Coating. Cast-iron pipe and fittings for underground use shall be coated with:

(a) Asphaltum;

(b) Coal tar pitch; or

(c) A coating produced and labeled as ASTM A743.

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be produced and labeled with the latest ASTM "specifications for welded wrought iron pipe".

Section 7. Mild-steel Pipe. Steel pipe shall be produced and labeled with the latest ASTM "specifications for welded and seamless steel pipe".

Section 8. Brass Pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe, and brass tubing shall be produced and labeled with the latest specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes".

Section 9. Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe, and Polypropylene Pipe. (1) Borosilicate pipe. Borosilicate pipe shall be produced and labeled with the latest ASTM specifications.

(2) Plastic pipe. All plastic piping used in a drainage, waste, and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D1784;

(b) Cellular core PVC produced and labeled ASTM F-891;

(c) Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D2661; or

(d) Cellular core ABS produced and labeled as ASTM F-628.

(3) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM-D-2665, as amended, for PVC and ASTM-D-2661 for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(4) Copies of National Sanitation Foundation specifications for the manufacture of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106.

(5) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification, and the size.

(6)(a) Except as established in paragraph (b) of this subsection, the use of plastic pipe and fittings (PVC or ABS) shall be restricted to buildings in which the plumbing system does not exceed forty-five (45) feet in height, measured from the grade plane as defined by the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125, and continuing through the vertical distance of the building to a maximum height of forty-five (45) feet.

(b) Plastic pipe and fittings may be installed in a building in which the plumbing system exceeds forty-five (45) feet in height if the installation complies with all of the requirements established in subparagraphs 1. through 8. of this paragraph.

1. The building shall not have an occupied floor located more than seventy-five (75) feet above the lowest level of fire department vehicle access.

2. Detailed building elevation plans shall be submitted to the department for any building exceeding forty-five (45) feet in height.

3. The use of plastic pipe and fittings (PVC or ABS) shall be limited to a vertical distance of forty-five (45) feet within the plumbing system, measured from the terminus of the plumbing system as it passes through the roof and continuing down the plumbing system to a maximum distance of forty-five (45) feet.

4. The use of plastic pipe and fittings (PVC or ABS) shall be allowed for use in the installation of the plumbing system located below ground underneath a building. Once the underground piping first penetrates the floor or slab, the plastic pipe shall be transitioned to other approved materials listed in 815 KAR 20:090 within six (6) inches of the floor or slab through which it penetrates.

5. The use of polyvinyl chloride and acrylonitrile-butadiene-styrene piping shall be limited to schedule 40 or 80 produced and labeled as ASTM D2665 and D1784 for PVC piping and ASTM D2661 for ABS piping.

6. The installation of the plastic pipe and fittings (PVC or ABS) shall be made in compliance with the manufacturer's recommendations, which shall be made available to the inspector.

7. All plastic (PVC or ABS) vertical drain, waste, and vent stacks shall be protected in a shaft enclosure constructed in accordance with the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125.

8. All plastic pipe penetrations in the shaft enclosure shall be protected as required by the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125[beginning at the floor or slab in which the soil or waste and vent stack first penetrates the floor or slab and through the vertical distance to its terminus through the roof of the building].

(7) Stainless steel tubing.

(a) Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as ASTM A268/268M.

(b) Stainless steel tubing for the soil, waste, and vent system shall be either Grade G or H produced and labeled as ASTM A268/268M.

(8) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as ASTM D-1204.

(9) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as ASTM D-4101 or ASTM F-1412.

Section 10. Lead Pipe, Diameter, Weights. (1) Lead soil, waste, and vent pipe shall be produced and labeled as Federal

Specifications WW-P-325 and shall not be lighter than the weights established in the following table:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"		Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3	8
2	D	XL	0.142	4	12
3	D	XL	0.125	6	0
4	D	XL	0.125	8	0

(2) Lead bends and lead traps. All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness.

Section 11. Integral Flashing. If a roofing system requires integral flashing, a flashing material, which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

Section 12. Sheet Lead. Sheet lead for a shower pan shall not weigh less than four (4) pounds per square foot and shall not weigh less than two and one-half (2 1/2) pounds per square foot for vent pipe flashings.

Section 13. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 14. Threaded Fittings. (1) A plain screw fitting shall be either cast-iron, malleable iron, or brass of standard weight and dimension.

(2) A drainage fitting shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) A cast-iron fitting used in a water supply distribution shall be galvanized.

(4) A malleable iron fitting shall be galvanized.

Section 15. Caulking Ferrules. A caulking ferrule shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 16. Soldering Nipples. A soldering nipple shall be recessed red cast brass, iron pipe size. If cast, they shall be full bore and of minimum weight.

Section 17. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. (1) A floor flange shall either be:

- (a) Hard lead;
- (b) Brass;
- (c) Cast iron;
- (d) Galvanized malleable iron;
- (e) ABS; or
- (f) PVC.

(2) A hard lead or brass flange shall not be less than one-eighth (1/8) inch thick.

(3) Cast iron or galvanized malleable iron shall:

- (a) Not be less than one-fourth (1/4) inch thick; and
- (b) Have a two (2) inch caulking depth.

Section 18. Use of Lead. (1) Lead shall not be used in the installation or repair of a public or private water system providing potable water for human consumption.

(2) This section shall not apply to:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable

services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses in which the water is not anticipated to be used for human consumption; or

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are two (2) inches in diameter or larger.

Section 19. New Materials. (1) Materials other than those established in this administrative regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department[Office] of Housing, Buildings[,] and Construction as being equal to or better than the material specified in the State Plumbing Code.

(2) It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove ~~[to the satisfaction of these agencies]~~ that the material is equal to or better than the material that[which] it is intended to replace.

(3) Procedural requirements for approval of new parts and materials are established in 815 KAR 20:020.

GARY A. FECK, Acting Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 4, 2015

FILED WITH LRC: June 11, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2015, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2015 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the type, quality and manufacturing specifications of materials that may be used in plumbing systems in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the construction and quality of materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of materials used in all regulated plumbing systems.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the permissible use of polyvinyl chloride (PVC) and acrylonitrile butadiene styrene (ABS) piping in the plumbing systems, which use is currently limited to buildings in which the plumbing system does not exceed forty-five (45) feet in height. This amendment would allow, within certain parameters, the use of PVC and ABS within buildings that do not have an occupied floor located more than seventy-five (75) feet above the lowest level of fire department vehicle access.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional opportunities for the permissible use of plastic piping within the majority of buildings constructed within the Commonwealth, while preserving essential fire safety and material quality conditions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and content of materials that may be used in the installation of plumbing systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists the Plumbing Division's duty to administer uniform standards for the use of PVC and ABS piping in the installation of plumbing systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; rather, it increases the permissible options for using plastic piping within plumbing systems throughout the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no new or increased costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include potentially decreased costs in the installation of certain plumbing systems and increased options in choice of materials.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant plumbing work will be equally subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), (10), 198B.050(2), 318.130, 318.150

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate a State Plumbing Code. This administrative regulation establishes the methods that shall be used in joining certain types of piping materials together and denotes the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also ~~establishes~~^{identifies} the manufacturer's specification number of the material accepted in those installations.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute and a copy of the ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, NY 10018.

(2) "ASTM" means the American Society for Testing Materials and a copy of the ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Water and Airtight Joints. Joints and connections shall be made gas and water tight.

Section 3. Vitrified Pipe Joints_[:] Concrete Pipe Joints_[:] House Sewers - Combined Sewers. (1) Joints in vitrified clay pipe shall be ASTM specification C-425.

(2) Joints in concrete pipe shall be ASTM specifications C-443.

(3) If it is necessary to use piping in other than standard lengths, hot poured joints may be used.

(4) Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall

completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub.

(5) Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene, or polyvinyl chloride to cast iron pipe and fittings or the joining of either material may be made with proper fittings by using a dispersion grade polyvinyl chloride ring produced and labeled as either ASTM C-443, C-425, or C-564, or a elastomeric polyvinyl chloride coupling.

Section 4. Caulked Joints. Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. Paint, varnish, or putty shall not be permitted until tests have been performed.

Section 5. (1) Screw joints. Screw joints shall be American Standard screw joints, and all burrs or cuttings shall be removed as required by 815 KAR 20:150.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ, or other material listed in approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings.

(a) Joints in polyvinyl chloride Schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2665.

(b) Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2661.

(c) Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as ASTM 3034 shall be joined by solvent cement produced and labeled as ASTM D-2661-90 for acrylonitrile-butadiene-styrene and ASTM D2665 for polyvinyl chloride or with an elastomeric joint in compliance with ASTM D3212.

(5) Copper pipe, brass, and stainless steel tubing joints.

(a) Joints of copper pipe, brass, and stainless steel tubing shall be soldered.

(b) Mechanical couplings.

1. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution shall be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings.

2. Couplings shall be of the angle pad design to obtain rigidity.

(6) Expansion. An expansion joint shall be of an approved type and the material shall comply with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe, or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

Section 6. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C-564-70.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as ASTM C-564, cast iron clamps produced and labeled as ASTM A-48, and stainless steel bolts and nuts produced and labeled as ANSI B-

18.2.1 and ANSI B-18.2.2.

Section 7. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department as established in 815 KAR 20:060.

Section 8. (1) Steel, brass, and copper connections to cast iron pipe. Steel, brass, and copper joints connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper, and cast iron pipe.

(a) Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper, or cast iron pipe shall be either a screwed or caulked joint.

(b) Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C-564-70.

(c) Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or galvanized steel pipe or to copper tubing.

(a) Stainless steel tubing to cast iron pipe shall be made by caulking spigot.

(b) Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping.

(a) Joints in vitreous glazed piping shall be made in compliance with manufacturer's recommendations.

(b) Joints in polyethylene and polypropylene piping shall be made by the heat fusion process.

(c) Joints in polypropylene shall be made with a union joint.

(d) Joints in borosilicate pipe shall be a stainless steel mechanical joint.

(e) Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 9. Lead Pipe. (1) Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch.

(2) The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used.

(3) If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 10. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel, or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 11. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 12. Soil Pipe, Iron Pipe, Copper Pipe, Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe, and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in compliance with manufacturer's recommendations.

Section 13. Slip Joints. (1) Slip joints shall be permitted on the inlet side of the trap.

(2) One and one-half (1 1/2) inch slip joint connection with an elastomeric gasket~~(Slip joints with one (1) elastomeric gasket connection including an internal stop]~~ shall be permitted on the outlet side of a one and one-half (1 1/2) inch trap~~the trap if the installation is within either a one- or two-family dwelling. Outlet side slip joints shall not be:~~

(a) Installed on a kitchen sink;

(b) Installed on a laundry tray;

(c) Installed with less than a one (1) inch protrusion through the finished wall; or

~~(d) Installed with a cross-type fitting unless:~~
~~1. The trap arm extends no less than twelve (12) inches between cross-type fitting and trap adapter; or~~
~~2. A forty-five (45) degree or greater fitting is between the cross-type fitting and the trap adapter].~~

Section 14. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 15. Roof Joints. (1) The joint at the roof shall be made watertight by use of copper, lead, or other approved flashing or flashing material.

(2)(a) Except as ~~established~~provided in paragraph (b) of this subsection, the approved flashing shall:

1. Not extend less than six (6) inches from the pipe in all directions; and

2. Extend upward twelve (12) or more inches and turn down into the pipe.

(b) Lead flashings for three (3) inch and four (4) inch vent stacks shall have a minimum twelve (12) inch base.

(3) A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 16. Increasers and Reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes[,] shall be used. This section shall not apply to nonmetallic installations.

Section 17. Prohibited Joints and Connections. A fitting or connection ~~that~~which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 18. Hangers and Supports. Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

GARY A. FECK, Acting Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 4, 2015

FILED WITH LRC: June 11, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2015, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2015 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the methods and materials that shall be used in joining certain types of piping materials together and plumbing fixtures to waste piping outlets.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a uniform state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the joints and connections used in the construction of a plumbing system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the materials and methods to be used in joining plumbing elements.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the restriction currently limiting the use of trap adapters to one (1) and two (2) - family dwellings, and eliminates the need for the installation of an internal stop by instead limiting connections to a one and a half (1 1/2) inch connection that can be inspected visually without the need to remove the adapter.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to both expand and simplify the permissible use of trap adapters, and eliminate the need to remove the trap in order to perform necessary inspections.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the standards of permissible construction and type of materials that may be used in the installation of plumbing joints and connections.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will simply and expand the permissible the use of trap adapters, and make easier the inspection of such devices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Plumbing professionals installing a trap adapter will have to comply with the amended requirement to utilize a one and a half (1 1/2) inch slip joint connection and trap.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no new or increased costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include expanded convenience and permissible use of trap adapters, and increased speed and ease of inspection.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This

amendment will not necessitate an increase in fees or require funding to the Department for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the amended provision will apply to all slip joints.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 310.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping. This administrative regulation establishes the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

Section 1. Independent System. (1) The drainage and plumbing system of new building and of a new work installed in an existing building shall be separate and independent of other buildings except as otherwise established in this administrative regulation.

(2) A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exceptions. (1)(a) If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer.

(b) The exception established in this subsection shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building that abuts a street or alley.

(2) A building sewer may serve additional buildings and still be considered as one (1) sewer if the additional buildings are:

(a) Used in conjunction with the primary building;

(b) Contained within the same deed as the primary building; and

(c) Restricted within the deed from being sold separately from the primary building.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. An excavation made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested, and approved.

Section 5. Depth of Sewer at the Property Line. (1) The sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2)(a) A house sewer shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot.

(b) A sewer shall have at least an eighteen (18) inch cover.

(c) Sewer piping installed under property subject to vehicular traffic (such as a driveway, parking lot, or similar location) shall have at least a twenty-four (24) inch cover unless constructed of cast iron piping. If less than a twenty-four (24) inch cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on each side and the top.

(d) A sewer shall be backfilled by hand and tamped six (6) inches above the piping or filled with six (6) inches grillage above the piping.

(e) Each joint in cast iron and vitrified clay pipe shall be constructed to comply with 815 KAR 20:060, Sections 4 and 5.

Section 6. New House Sewer Connections. A house sewer installed where a private sewerage system has been discarded may connect to the house drain if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. A house sewer or combined sewer shall be made of:

(1) Extra heavy cast iron pipe;

(2) Service weight cast iron;

(3) Vitrified clay;

(4) Concrete;

(5) Coextruded composite PVC pipe produced and labeled ASTM F-1488;

(6) PVC or ABS plastic pipe Schedules 40 and 80;

(7) Cellular core PVC produced and labeled as ASTM F-891;

(8) Cellular core ABS produced and labeled as ASTM 628 or ASTM F-1488;

(9) Truss pipe;

(10) Extra heavy SDR 35 pipe;

(11) Type PS 46, PVC in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F789;

(12) PVC ribbed pipe produced and labeled as ASTM F794; or

(13) Polyethylene pipe produced and labeled as ASTM F-714.

Section 8. Material for Storm Sewers Inside Buildings. (1) A storm sewer inside of a building extending to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be made of:

(a) Cast iron pipe;

(b) Aluminum; or

(c) Schedule 40 ABS or PVC DWV pipe or PVC pipe produced and labeled as ASTM F-1488.

(2) A storm sewer in a size of ten (10) inches or larger shall be made of:

- (a) Cast iron;
- (b) Aluminum;
- (c) Schedule 40 ABS or PVC DWV pipe;
- (d) SDR 35;

(e) Vitrified clay or concrete conforming to appropriate commercial specifications with approved joints; or

(f) Polyethylene pipe produced and labeled as ASTM F-714.

(3) Primary and secondary roof drains shall comply with the requirements established in this subsection.

(a) 1. Roof drains shall have strainers extending not less than four (4) inches above the surface of the roof immediately adjacent to the roof drain.

2. Strainers shall have an available area not less than one and one-half (1 1/2) times the area of the conductor or leader to which the drain is connected.

(b) Roof drain strainers for use on sun decks, parking decks, and similar areas that are normally services and maintained may be of the flat surface type, installed level with the deck, with an available inlet area not less than two (2) times the area of the conductor or leader to which the drain is connected.

(c) Secondary (emergency) roof drains or scuppers shall be provided where the roof perimeter construction allows ponding if the primary roof drains become blocked.

(d) Separate systems required.

1. Secondary roof drain systems shall have piping and point of discharge separate from the primary system.

2. Discharge shall be above grade in a location that would normally be observed by the building occupants or maintenance personnel.

(e) Primary and secondary drains shall be sized in accordance with Section 11 of this administrative regulation.

Section 9. Change of Direction. A change in direction of a sewer shall be made only with:

- (1) Long curves;
- (2) Forty-five (45) degree wyes;
- (3) Half wyes;
- (4) Quarter, sixth, eighth or sixteenth bends; or

(5) Sanitary tees installed on their back or on their sides. If installed, sanitary tees shall be at an angle of not more than forty-five (45) degrees.

Section 10. Size of House Sewers and Horizontal Branches.

(1) The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain.

(2) A house sewer receiving a branch shall be sized in the same manner as a house drain.

(3) The house drains shall be installed in accordance with 815 KAR 20:090.

Section 11. Size of Storm Systems. (1) The required size of a storm sewer shall be determined on the basis of the total drained area in horizontal projection in accordance with the table in subsection (4) of this section.

(2) A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall.

(3) The storm sewer shall be laid at a sufficient depth to protect it from freezing.

(4)

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3	N/A	1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. (1) If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area, and the total fixture units, adding the product to the drained area and applying the sum from the table for storm water sewers in Section 11 of this administrative regulation.

(2) A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

(3)

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM								
Number of Fixture Units on Sanitary System								
Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3

to 3,645								
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

(4)

Number of Fixture Units on Sanitary System								
Drained roof area in square feet	325 to 486	487 to 732	733 to 1098	1,099 to 1644	1,645 to 2466	2,467 to 3702	3,703 to 5556	Over 5556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 - 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 - 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 - 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 - 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 - 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 - 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 - 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 - 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 - 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 - 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 - 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(5) For a building constructed after August 1, 1996, each plumbing fixture or opening connecting to a combination sanitary and storm sewer system shall either:

(a) Be installed above the elevation of the cover of the nearest manhole serving the main; or

(b) Discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding of the building.

Section 13. House Sewer in Undisturbed or Filled Ground. (1) A house sewer laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand, or other approved grillage as defined in 815 KAR 20:010, Section 1(94).

(2) A house sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other equivalent support that shall be approved by the department.

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

(4) A house sewer constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top, and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. (1) A storm sewer laid in undisturbed ground shall not require grillage.

(2) A storm sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the office.

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In a public building in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by a device that complies with Sections 17 and 18 of this administrative regulation and discharged into the building sewer.

Section 16. Drainage Below Sewer Level (Residential). (1) In a home in which the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump appropriate for that installation.

(2) The sump pit shall:

(a) Be gas and air tight; and

(b) Be constructed of:

1. Poured or precast concrete;

2. Approved fiberglass; or

3. Polyethylene material.

(3) The sump pit shall be provided with a two (2) inch vent, which may also act as a waste and vent for a laundry tray.

(4) The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade.

(5) The sump pit shall be provided with a tight-fitting concrete cover.

(6)(a) On the outside of the building, this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee, which shall connect into a four (4) inch P trap and then into the sanitary sewer.

(b) The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. (1) A subsoil drain shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity.

(2) The sewage shall be lifted and discharged into the house sewer by a pump or ejector.

(3) Sewage sumps shall be a minimum twenty four (24) inches in diameter and no less than twenty four (24) inches in depth.

(4) A system that relies solely on a pump shall be equipped with both an audible and visual alarm to be placed within the occupied space.

(5) The sump shall automatically discharge.

Section 18. Ejectors, Vented. (1) A sewage ejector serving a residential installation shall be vented with a two (2) inch vent.

(2)(a) Except as established in paragraph (b) of this subsection, an ejector serving a commercial or industrial installation shall be vented with a three (3) inch vent.

(b)1. If a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be reverted with a two (2) inch vent back to the three (3) inch vent stack.

2. The ejector vent shall not be smaller than that recommended by the manufacturer of the pump.

(3) A portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined sanitary and storm sewer, except for a system designed otherwise by a licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, and Air Tanks. (1) A motor, air compressor, or air tank shall be located so that it shall be open for inspection and repair at all times.

(2) An air tank shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating.

(3) The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. (1) If a subsoil catch basin is installed below the sewer level, an automatic ejector shall be used.

(2) The ejector or a device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas, Roofs, and Traps. (1) A roof, paved area, court, or courtyard shall be drained into:

(a) A storm water system;

(b) A combined sewerage system; or

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) A yard, roof, paved area, court, or courtyard shall not be drained into a sewer intended for sewage only.

(3) Traps.

(a) If a drain is connected to a combined sewerage system, it shall be trapped.

(b) If a roof leader, conductor, or gutter opening is located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) A trap shall be set below the frost line or on the inside of the building.

(d) If a drain is not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than as established in the following table:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. (1) If a conductor or roof leader is placed within the walls of a building, or in an interior court or ventilating pipe shaft, it shall be constructed of:

(a) Cast iron pipe;

(b) Galvanized wrought iron;

(c) Galvanized steel;

(d) Copper;

(e) Schedule 40 ABS/PVC DMV pipe; or

(f) Reinforced thermosetting resin pipe produced and labeled as ASTM F1113 (red and silver thread).

(2)(a) The use of PVC and ABS conductors shall be limited to buildings that do not have an occupied floor located more than seventy-five (75) feet above the lowest level of fire department vehicle access.~~The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof.~~

(b) The PVC and ABS conductors shall be limited to a maximum vertical distance of forty-five (45) feet and the piping located underground underneath the building. The forty-five (45) foot vertical distance shall be measured beginning at the terminus of the roof and continuing through the vertical distance down the conductor to a maximum distance of forty-five (45) feet.

(c) The use of polyvinyl chloride and acrylonitrile-butadiene-styrene piping shall be limited to Schedule 40 or 80 produced and labeled as ASTM D2665 and D1784 for PVC piping and ASTM D2661 for ABS piping.

(d) The installation of the plastic pipe and fittings (ABS or PVC) shall be made in compliance with the manufacturer's recommendations, which shall be made available to the inspector.~~Provisions shall be made for the expansion and contraction of plastic pipe.~~

Section 24. Outside Conductors. (1) If an outside sheet metal conductor or downspout is connected to a house drain, it shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line.

(2) If the downspout runs along a public driveway without a sidewalk, it shall be placed in a niche in the walk, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one that conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. (1) A conductor pipe shall not be used as a soil, waste, or vent pipe.

(2) A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. An overflow pipe from a cistern, supply tank, expansion tank, or drip pan shall connect indirectly with a house sewer, house drain, soil pipe, or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. A subsoil drain shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. If the local health department or sanitary sewage system board, plant, district, or treatment plant owner prohibits the discharge of a basement floor drain or other apparatus into the sanitary sewer system, an existing basement floor drain or sump pump apparatus shall comply with the construction requirements of this administrative regulation and be inspected prior to the approval of a connection for a new sewer line.

GARY A. FECK, Acting Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 4, 2015

FILED WITH LRC: June 11, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2015, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2015 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the construction of house sewers and storm water piping.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of materials used in all regulated house sewers and storm water piping.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the permissible use of polyvinyl chloride (PVC) and acrylonitrile butadiene styrene (ABS) piping in the construction of storm water conductors, which use is currently limited to buildings in which the plumbing system does not exceed forty-five (45) feet in height. This amendment would allow, within certain parameters, the use of PVC and ABS within buildings that do not have an occupied floor located more than seventy-five (75) feet above the lowest level of fire department vehicle access.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency and uniformity with the agency's corresponding amendment to 815 KAR 20:060, which governs the permissible use of PVC and ABS pipe and fittings within a building, and which also expands the permissible use of plastic piping to buildings that do not have an occupied floor located more than seventy-five (75) feet above the lowest level of fire department vehicle access (i.e., buildings that do not constitute a high rise under the Kentucky Building Code).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the standards of permissible construction, quality and content of materials that may be used in house sewers and storm water piping.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure uniform standards for the use of PVC and ABS piping in the installation of house sewers and storm water piping.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity related to house sewers and storm water piping within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment imposes no new requirements on the affected parties; rather, it increases the permissible options for using plastic piping within house sewers and storm water piping.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no new or increased costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include potentially decreased costs in the installation of certain sewer connections and increased options in choice of materials.

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

(a) Initially: There are no anticipated additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any agency costs resulting associated with this amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant house sewer and storm water piping work will be subject to the amended approved options.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500-238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned by a card-minding device system or electronic pulltab system to a customer that uses a card-minding device to play bingo or an electronic pulltab device to purchase and play a pulltab.

(2) "Bet block" means an area that indicates the dollar amount of the wager.

(3) "Bingo ball" means a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(4) "Bingo machine" means:

(a) A type of selection device with a receptacle for the unselected bingo balls, a blower for selecting the balls, and a ball tray that contains seventy-five (75) holes in which to place the ball once it is called; or

(b) A generator that randomly selects the balls and displays them on the face of the device.

(5) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(6) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion that becomes a unique item for sale with a specific price.

(7) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(8) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(9) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(10) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other device; and

(d) Placed in a ball tray or otherwise continuously displayed until completion of the bingo game.

(11) "Cash" means currency, coinage, or a negotiable instrument.

(12) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is more than the amount of money due from the sale of that quantity of gaming supplies.

(13) "Cash short" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is less than the amount of money due from the sale of that quantity of gaming supplies.

(14) "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or facility.

(15) "Chief financial officer" means the person who shall be:

(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or facility;

(b) The custodian of the gaming occasion records; and

(c) Responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the department.

(16) "Conditioning" means a restatement of:

(a) How many numbers or combinations of numbers are being

selected by the players;

(b) The way in which the numbers are being wagered; and

(c) The corresponding dollar amount wagered.

(17) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(18) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.

(19) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(20) "Deal" means each separate game or series of pulltabs, including electronic pulltabs, which has the same serial number and which may be composed of multiple packages. A deal of electronic pulltabs is called a "game set".

(21) "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data.

(22) "Disposable paper bingo face" means a nonreusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.

(23) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.

(24) "Electronic pulltab" means an electronic version of a paper pulltab that is distributed from a finite number of game outcomes by a central computer system and played on an electronic pulltab device.

(25) "Electronic pulltab system" means a central computer system, including an optional site system; electronic pulltab devices; point of sale stations; secondary components; and proprietary software, whereby the central computer system communicates with electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels. The electronic pulltab system also provides reporting and control functions as specified by 820 KAR 1:033.

(26) "EPROM" means Erasable Programmable ROM.

(27){(25)} "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab[ticket].

(28){(26)} "Exception log" means a record documenting a prize payout that has not been authorized by the computer.

(29){(27)} "Face" means a paper or an electronic representation containing:

(a) Five (5) rows of five (5) squares with numbers or symbols;

(b) A free center space;

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and

(d) A unique perm number identifying each face.

(30){(28)} "Fixed base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, which has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.

(31) "Fixed base electronic pulltab device" means a single personal computing device which has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device. A fixed based electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(32){(29)} "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the[and] payout structure, and other information as set forth by 820 KAR 1:032, 820 KAR 1:033, and 820 KAR 1:036.

(33){(30)} "Flashboard" or "display board" means a board that displays the bingo numbers called.

(34){(34)} "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(35){(32)} "Gambling" means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which:

(a) Is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value if there is a certain outcome; and

(b) Does not include a contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill.

(36) "Game set" means the entire pool of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number. This term is equivalent to "deal".

(37) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(38){(33)} "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of raffle tickets.

(39){(34)} "Gaming occasion program", "bingo program", "occasion program", or "program" means a written list of all games to be played and prize amounts to be paid for each game during a gaming occasion, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(40){(35)} "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.

(41) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device, that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(42){(36)} "Hard card" means a reusable card bearing a bingo face or faces.

(43){(37)} "Inside ticket" means a blank Keno ticket:

(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and

(b) Containing a bet block.

(44){(38)} "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal, or game set to game set, until it is won.

(45){(39)} "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(46){(40)} "Keno" means a numbers game in which:

(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and

(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.

(47){(41)} "Keno equipment" means:

(a) An electronic selection device;

(b) A random number generator;

(c) A computerized Keno system; or

(d) An integrated system of computer hardware and software that:

1. Generates a player ticket;

2. Records a game outcome;

3. Verifies a winning ticket;

4. Produces a management report; or

5. Performs other internal audit controls of a Keno operation.

(48){(42)} "Keno manager" means the person in charge of the operation of the Keno game.

(49){(43)} "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(50){(44)} "Merchandise prize" means a noncash prize given away at a charitable gaming event either as a game prize or a door prize.

(51){(45)} "Model number" means the name or number

designated by the manufacturer that indicates the unique structural design of a hand-held card-minding device, fixed base card-minding device, or card-minding system component, hand-held electronic pulltab device, fixed base electronic pulltab device, or any element of an electronic pulltab system.

(52)[(46)] "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000[10,000] tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(53)[(47)] "Multirace ticket" means a single Keno ticket that allows a player to make the same wager on consecutive games.

(54)[(48)] "Outside ticket" means a computer-generated Keno ticket given to the player which reflects game and wagering information.

(55)[(49)] "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.

(56)[(50)] "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(57)[(51)] "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the gaming occasion before the game is played.

(58)[(52)] "Player tracking software" means computer software installed on a card-minding device system, electronic pulltab system, or other point of sale system that is used to identify or track certain characteristics of bingo or pulltab players, including personal data and purchasing habits.

(59)[(53)] "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.

(60)[(54)] "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(61)[(55)] "PROM" means programmable ROM.

(62)[(56)] "Promotional" means any item available at no charge to all participants at an event.

(63)[(57)] "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of a [the] card-minding device system or electronic pulltab system and is required for a card-minding device to be used in a game of bingo or for an electronic pulltab device to be used to play an electronic pulltab.

(64)[(58)] "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

(65)[(59)] "Purchased prize" means any merchandise prize that was purchased and not donated.

(66)[(60)] "Quick pick" means a number selection made for the player by a computer.

(67)[(61)] "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(68)[(62)] "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

(69)[(63)] "ROM" or "read only memory" means the electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on and may be either "PROM" or "EPROM".

(70)[(64)] "Secondary component" means an additional

software or hardware component that:

(a) Is part of or is connected to a card-minding device system or electronic pulltab system;

(b) Does not affect the conduct of the game of bingo or an electronic pulltab;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks.

(71)[(65)] "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(72)[(66)] "Selection device" means a device that:

(a) May be operated manually or automatically; and

(b) Is used to randomly select bingo numbers.

(73)[(67)] "Selection pool" means the bingo numbers in a selection device that have not been selected.

(74)[(68)] "Serial number" means a number assigned by the manufacturer to track the individual product.

(75)[(69)] "Series number" means the number of unique faces contained in a series.

(76)[(70)] "Set" means a case or cases of paper that contain one (1) of each face in a series.

(77)[(71)] "Site system" means computer hardware, software, and peripheral equipment leased or purchased from a licensed distributor and used by a licensed organization to conduct, manage, and record bingo games played on card-minding devices and electronic pulltab games played on electronic pulltab devices.

(a) It shall [that]:

1. Be [a]-[s] located at the gaming[bingo] premises;

2. Be [b]-[s] operated by the charitable organization;

3. Interface [e]-[s] with, connect[connects] with, control[controls] or define[defines] the operational parameters of card-minding devices or electronic pulltab devices;

4. Report and transmit the game results as prescribed by the department;

5. Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

6. Contain a point of sale station.

(b) It [d] may include the following components:

1. Point of sale station;

2. A caller verification system;

2.3. Required printers;

3.4. Modem;

4.5. Proprietary executable software;

5.6. Report generation software; and

6.7. An accounting system or database.

(78)[(72)] "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device or a specific electronic pulltab device.

(79)[(73)] "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(80)[(74)] "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face by perm number; and

(b) Is used to verify the authenticity of a winning face.

(81)[(75)] "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system or the electronic pulltab system.

(82)[(76)] "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(83)[(77)] "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(84)[(78)] "Year" is defined by KRS 238.505(25).

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: June 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2015 at 10:30 a.m. Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day on July 31, 2015. 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: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms necessary to implement use and regulation of electronic pulltab devices as approved by SB 33.

(b) The necessity of this administrative regulation: This regulation is necessary to define terms used in 820 KAR Chapter 1 which governs the conduct of charitable gaming in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is KRS 238.515(9). KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes specifically require the promulgation of administrative regulations to carry out the purpose and intent of the statutes. Terms used within those regulations must be defined. Specifically, the statutes require the department to define and regulate the use and control of electronic pulltab devices. This regulation facilitates effective administration of the statutes by providing definitions to terms used in the remaining regulations governing manufacturing, distribution, control, and use standards for electronic pulltab devices.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the following definitions: "account number"; "cumulative pulltab game"; "deal"; "event game"; "flare"; "jackpot prize"; "last sale"; "model number"; "multipackaged pulltab deal"; "player tracking software"; "progressive pulltab game"; "proprietary software"; "pulltab"; "secondary component"; "site system"; "terminal number"; and "version number". This amendment adds definitions of the following words: "electronic pulltab"; "electronic pulltab system"; "fixed base electronic pulltab device"; "game set"; "game subset"; and "hand-held electronic pulltab device". The amendment also clarifies that certain definitions only apply to Keno, including: "multirace ticket"; and "outside ticket".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as SB 33 was passed during the 2015 legislative session. SB 33 establishes the use of electronic pulltab devices in the conduct of charitable gaming.

Definitions are necessary to define terms relating to electronic pulltab devices; this includes changing some existing definitions and adding others.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authority for this regulation is KRS 238.515(9). KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1, which will include terms relating to newly authorized electronic pulltab devices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment defines terms that will be used throughout 820 KAR Chapter 1 regarding the licensing, manufacturing, distribution, use, and regulation of electronic pulltab devices. Those regulations are required by SB 33.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed charitable organizations, distributors and manufacturers that wish to use, manufacture, or distribute electronic pulltab devices will be impacted by the regulation change. There are currently 615 licensed organizations, sixteen (16) licensed distributors, and twenty-four (24) licensed manufacturers; though the number of distributors and manufacturers is expected to rise due to the passage of SB 33. These licensees will be impacted as the regulation defines the terms to be used in other regulations to govern the manufacturer, distribution, and use of electronic pulltab devices.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: They will not be required to take any action as a result of this regulation change as this change only defines terms used in other regulations.

(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 costs associated with complying with this amendment as it only defines terms used in other regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): This regulation change simply updates or adds definitions used elsewhere in the regulations, therefore this amendment does not necessarily require "compliance" that would lead to accrual of any benefit.

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

(a) Initially: There will be no cost to implement this amendment to the administrative regulation as it only defines terms used in other regulations.

(b) On a continuing basis: There should be no additional cost on a continuing basis as this amendment only defines terms used in other regulations.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation as it only defines terms used in other regulations. Similarly, there will be no additional funding necessary to enforce 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 change, if it is an amendment: There will be no increase in fees or funding necessary to implement this amendment to the administrative regulation as it merely defines terms used in other regulations.

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all licensed charitable gaming entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.505, KRS 238.515, and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency due to 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? The amendment to the regulation should not generate revenue in the first year or in subsequent years.

(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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? This regulation simply defines terms used elsewhere in regulations that are also being updated or added. There may be some cost associated to administer the program as a whole, but there will be no costs associated to administer this particular regulation.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact as the amendment merely defines terms used in other regulations and does not require any new or additional procedures or actions.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:032. Pulltab construction.

RELATES TO: KRS 238.505(5), (27), (28), 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Department[Office] of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the department[office] to establish standards for pulltab construction, distribution, and rules of play. This administrative regulation establishes standards for the construction and distribution of pulltabs.

Section 1. Conformity of Paper Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 2. Paper Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and

assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsection (10) or (11) of this section, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual pulltab;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 3. Randomization of Paper Pulltabs. Winning paper pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 4. Packaging and Distribution of Paper Pulltabs. (1)(a) Each paper pulltab deal's package, box, or other container shall be

sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 5. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card that has printed on it, by the manufacturer, the following information:

(a) The name of the game;

(b) The manufacturer's name or logo;

(c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

(g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 6. Cumulative Games, and Carryover or Progressive Games. (1) The rules for cumulative games, and carryover or progressive games, shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a[the] cumulative prize pool, or a [the] carryover or progressive jackpot, shall be predetermined by the manufacturer and built into the payout structure for the game. For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game. For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each game.

(3)[(2)] All games contributing to the cumulative prize pool, or the carryover or progressive jackpot, shall be of the same form number.

(4)[(3)] The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5)[(4)] If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6)[(5)] If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7)[(6)]—In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used pursuant to 820 KAR 1:036, Section 2(15).

(8)[(7)] A progressive pulltab game shall not be designed by the manufacturer to give any player odds greater than a fifty (50) percent chance to win the progressive jackpot.

Section 7. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3)[(2)] The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4)[(3)] An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5)[(4)] The prize for an event pulltab game shall not be considered a bingo prize.

Section 8. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 9. Tracking by Manufacturer. Every manufacturer of paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

Section 10. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

(2) For sales in the Commonwealth of Kentucky, or to residents of Kentucky, the records required under this section shall be deemed sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be deemed sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 11. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

(a) The purchaser's name, address, and license number;

(b) The address to which the shipment was delivered;

(c) The date of sale or credit;

(d) The conditions of the sale or credit;

(e) The quantity of pulltabs sold including the number of the deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;

(f) The total invoice amount;

(g) The name of the person who ordered the supplies;

(h) The name of the person making the delivery;

- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location[place] or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department[office].

Section 12. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect, or replace the defective items, within a reasonable time, if possible.

(2) If the department[office], in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department[office] shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or

(b) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department[office] shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the department[office] shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: June 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2015 at 10:30 a.m. Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day on July 31, 2015. 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: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the construction standards for traditional paper pulltabs, including requirements for certain types of pulltab and tracking of what is sold by distributors and manufacturers.

(b) The necessity of this administrative regulation: This regulation is necessary to properly regulate the construction and use of pulltabs in the conduct of charitable gaming in Kentucky. The amendments to this regulation are necessary as the legislature passed a bill approving the use of electronic pulltab devices. The amendments simply state what requirements apply to paper pulltabs versus electronic pulltabs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is KRS 238.515(2),(4),(9), 238.545(1),(2). KRS 238.515 sets forth the powers and duties of the department which include establishing and enforcing reasonable standards for the conduct of charitable gaming and authorizes the department to promulgate administrative regulations to carry out the provisions of the chapter. KRS 238.545(1) and (2) set forth the restrictions on frequency, prizes, and participation for different types of charitable gaming, including the use of pulltabs and electronic pulltab devices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: SB 33 of the 2015 legislative session amended KRS 238.505 and KRS 238.545 to authorize the use of electronic pulltab devices in the conduct of charitable gaming in Kentucky. Previously, only paper pulltabs were authorized for use and this regulation only governed the use of the same. The amendment to this regulation facilitates effective administration of the statutes by making clear what parts of the regulation apply to paper pulltabs and what parts apply to electronic pulltab devices.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the regulation by clarifying what portions of the regulation apply only to paper pulltabs and which portions apply to both paper and electronic pulltabs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as SB 33 was passed during the 2015 legislative session. SB 33 establishes the use of electronic pulltab devices in the conduct of charitable gaming. Previously, this regulation only applied to paper pulltabs. This amendment clarifies which portions of the regulation apply only to paper pulltabs and which portions are now applied to both paper and electronic pulltabs.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authority for this regulation is KRS 238.515(2), (4), (9), 238.545(1), (2). KRS 238.515 sets forth the powers and duties of the department which include establishing and enforcing reasonable standards for the conduct of charitable gaming and authorizes the department to promulgate administrative regulations to carry out the provisions of the chapter. KRS 238.545(1) and (2) set forth the restrictions on frequency, prizes, and participation for different types of charitable gaming, including the use of pulltabs and electronic pulltab devices. This amendment conforms to the content of the authorizing statutes by clarifying which portions of the regulations apply only to paper pulltabs and which portion applies to both paper and electronic pulltabs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies what terms and requirements within the regulation applies only to paper pulltabs and which portions apply to paper and electronic pulltabs since the passage of SB 33.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed charitable organizations, distributors and manufacturers that wish to use, manufacture, or distribute electronic pulltab devices will be impacted by the

regulation change. There are currently 615 licensed organizations, sixteen (16) licensed distributors, and twenty-four (24) licensed manufacturers; though the number of distributors and manufacturers is expected to rise due to the passage of SB 33. These licensees will be impacted as the regulation clarifies what requirements in the regulation apply only to paper pulltabs and which terms can be applied to both paper and electronic pulltabs.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: They will not be required to take any action as a result of this regulation change. Previously the regulation only applied to paper pulltabs. The amendment to the regulation does not change any of the law related to paper pulltabs. The amendment only clarifies that certain requirements apply only to paper pulltabs and not to electronic pulltabs. The only terms that apply to both paper and electronic pulltabs are with regards to different types of pulltab games. As those regulations relate to paper pulltabs, there has been no change in the law. As those terms apply to electronic pulltabs it will only affect the manufacturing of electronic pulltab games should a manufacturer wish to include those types of games for sale with their electronic pulltab devices. There is no requirement these games be included. If they are included, then the law as previously applied to paper pulltab games would also apply to electronic pulltab games.

(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 costs associated with complying with this amendment as it does not change the law relating to paper pulltabs and only clarifies that certain terms related to types of games can be applied to both paper and electronic pulltabs. Thus, the only potential cost associated would be with manufacturing the games to be used with electronic pulltab devices, which is a cost manufacturers would incur with or without this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): This regulation establishes construction standards for paper pulltabs and certain types of pulltab games. Compliance with this regulation simply allows manufacturers to manufacture, distributors to distribute, and organizations to play the pulltabs that conform to this regulation.

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

(a) Initially: There should be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There should be no additional funding necessary to implement this amendment. There would only be minimal additional funding necessary to enforce the provisions of the amended regulation as it does not change the law related to paper pulltabs and only indicates a couple of areas where the regulation would apply to the newly authorized electronic pulltabs. Any cost would be rolled in to already existing duties of the department, or duties under a new regulation regarding electronic pulltab devices.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change, if it is an amendment: There will be no increase in fees or funding necessary to implement this amendment to this administrative regulation as it merely clarifies what terms apply to paper pulltabs and which term are applied to both paper and electronic pulltabs.

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all licensed charitable gaming entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.505, KRS 238.515, and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency due to 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? The amendment to the regulation should not generate revenue in the first year or in subsequent years.

(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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? This regulation simply clarifies what requirements apply to paper pulltabs and what terms apply to both paper and electronic pulltabs since the passage of SB 33. While there may be some cost associated to administer the program relating to electronic pulltab devices as a whole, there will be no costs associated to administer this particular regulation.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact as the amendment merely clarifies what requirements apply to paper pulltabs and what terms apply to both paper and electronic pulltabs since the passage of SB 33.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

902 KAR 115:010. Water fluoridation for the protection of dental health.

RELATES TO: KRS Chapter 211

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1), 211.090(3), 211.190(11)[-211.190(10)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.190(11) requires[211.190(10) directs] the Cabinet for Health and Family Services[Human Resources] to provide public health services that include water fluoridation programs for the protection of dental health. This administrative regulation sets forth the requirements for the programs.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Consecutive supply" means a supply that purchases its water from another water system.

Section 2. Community Implementation. The population served by a water system includes its own population and the population served by its consecutive supplies. (1) A[All community] water system[systems] serving a community population of 3,000 or more, including consecutive supplies, shall adjust fluoride-deficient[fluoride-deficient] waters to protect the dental health of the

people served by the supply. ~~[For the purposes of this administrative regulation, consecutive supply shall mean a supply that purchases its water from another public water system. The population served by a community water system shall include its own population, as well as the population served by all of its consecutive supplies.]~~

(2) ~~A[Community] water system[systems] serving a population between 1,500 and 3,000 shall provide supplemental fluoridation only if adequate fluoride feed equipment is available from the cabinet[for Human Resources], Department for Public Health[Services].~~

(3) Although not required to provide supplemental fluoridation, ~~a[community] water system[systems] serving a population of less than 1,500 that chooses[chose] to provide supplemental fluoridation shall do so only if adequate fluoride feed equipment is available from the cabinet[for Human Resources], Department for Public Health[Services], and there are competently trained or certified personnel at the[community] water system.~~

Section 3.2. Approval. ~~A[All—community] water system[systems] shall obtain the written approval of the cabinet[for Human Resources] before adding fluorides to a public water system, pursuant to Section 5 of this administrative regulation. [Approval by the cabinet shall be contingent upon the presentation of evidence satisfactory to the cabinet that the plant facilities and operation will provide for adequate control and supervision, safe operation and maintenance, the keeping of operational records, and compliance with this administrative regulation and 401 KAR Chapter 8:010 through 8:700 relating to public water systems.]~~

Section 4.3. Equipment, Facilities, and Services. The equipment, facilities, and services shall meet the requirements set forth in this section. ~~[below:]~~

(1) Feeding. ~~[Reliable] Feeding equipment with an accuracy within five (5) percent shall be provided to feed the optimal[proper] dosage of fluoride. The rate of feed shall[be in a manner that will] give a fluoride content operating tolerance range between six-tenths (0.6)[eight-tenths (0.8)] ppm and one and two-tenths (1.2)[four-tenths (1.4)] ppm in the treated water, with an optimal concentration of seven-tenths (0.7) ppm [Based on an evaluation of Kentucky climatological information, a fluoride concentration of no less than nine-tenths (0.9) ppm is recommended in the finished water]. The point of application shall be selected so that fluoride is[will be] evenly mixed with the water leaving the treatment plant.~~

(2) Method of measurement.

(a) Saturator tanks. If solution feed equipment is ~~[to be]~~ used, the water plant shall have a corrosion-resistant solution tank, and an accurate means for weighing the stock chemical (fluoride) available. A metering device for measuring the water for the solution shall also be ~~used[provided]~~.

(b) Dry feed hoppers. Dry feed hoppers shall be mounted on scales.

(c) Acid systems (H_2SiF_6). Scales shall be available to measure the weight loss each day or a ~~volumetric[some other appropriate]~~ method of measuring the amount of acid being used each day ~~shall be used~~.

(3) Protection of operator. ~~[Special] Precautions shall be taken to protect the operators. Precautions shall[may vary with the type of installation, but, at a minimum, should] include:~~

(a) An approved respirator;

(b) ~~[or]~~ Approved rubber gloves;

(c) An[-] eye shield;

(d) An[-and] apron; and

(e) ~~[as indicated by the type of fluoride being used (dry or liquid).]~~ An[adequate] exhaust or ventilation system ~~[shall be provided]~~ for all fluoride feeding equipment.

(4) Storage. Separate storage areas shall be ~~used[provided]~~ for all fluoride chemicals.

(5) Laboratory facilities. Laboratory facilities shall be ~~used[provided]~~ for the determination of the fluoride content of the water by ~~[competent] personnel in accordance with the current standards[procedures outlined by the Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992). The~~

Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992), is jointly prepared and] published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation[, and is incorporated by reference. This publication may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, or may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005].

(6) Samples. Raw water and plant tap water samples shall be examined at least once per day and the results shall be included on the standard monthly operation report submitted to the Energy and Environment Cabinet. Additional finished water samples shall be analyzed by a laboratory certified by the Energy and Environment Cabinet ~~[for Natural Resources and Environmental Protection]~~ in accordance with 401 KAR 8:040 for fluoride determination, with the results being forwarded to the cabinet, Department for Public Health. This sampling shall be at a rate of two (2) samples per month. The first sample shall be collected from the plant tap during the first week of the month and the second sample collected from the distribution system, at a point of maximum retention, during the third week of the month. ~~[Evaluation of the results of these analyses shall be within the province of the cabinet.]~~

(7) Siphon breakers. Fluoride feeders shall be equipped with siphon breakers to prevent back siphonage of concentrated fluoride solution into the distribution system.

(8) Notification of Cabinet when fluoride begins. The cabinet shall be notified of the date on which fluoridation is to commence in order that a representative of the cabinet may be present to calibrate and check the fluoridation equipment and instruct the operating personnel concerning tests, records, operation, and safety precautions.

(9) Notice when fluoride is interrupted. The owner or operator of the water plant shall immediately notify the cabinet of any interruption to the addition of fluoride to the water supply.

Section 5.4. Procedure for Obtaining Approval. A system shall submit ~~to the cabinet[, in support of an application for approval,]~~ the following:

(1) Detailed plans showing the method and point of application of fluoride and storage facilities for stock chemicals;

(2) Information concerning technical supervision of the treatment process; ~~[and]~~

(3) ~~Information on the~~ provisions for laboratory facilities; ~~and~~
~~Evidence that the plant facilities and operation will provide~~
~~for:~~

(a) Control and supervision;

(b) Safe operation and maintenance;

(c) The keeping of operational records; and

(d) Compliance with this administrative regulation and 401 KAR 8:010 through 401 KAR 8:700 relating to public water systems.

STEPHANIE MAYFIELD GIBSON, MD, FCAP

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative

regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. 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 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the requirements for the fluoridation of a water system for the protection of dental health.

(b) The necessity of this administrative regulation: KRS 211.190(11) requires the Cabinet to provide public health services including the establishment, maintenance, monitoring, and enforcement of water fluoridation programs for the protection of dental health. This administrative regulation provides for water fluoridation programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.190(11) requires the Cabinet to provide public health services including the establishment, maintenance, monitoring, and enforcement of water fluoridation programs for the protection of dental health. This administrative regulation provides for water fluoridation programs and contains the requirements for such programs.

(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 protecting the health of the individual citizens of the Commonwealth and stating the requirements for water fluoridation programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment lowers the operating tolerance range of fluoride in the water system and lowers the optimal amount of fluoride in the water system (public drinking water) from nine tenths (0.9) ppm to seven tenths (0.7) ppm. This amendment also contains numerous formatting and grammatical changes for compliance with KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The optimal amount of fluoride in the water system has been lowered by the United States Centers for Disease Control and Prevention, Department of Health and Human Services, and Environmental Protection Agency. For consistency with federal recommendations, the Cabinet is lowering the optimal amount to the same level, seven tenths (0.7) ppm.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth. Because federal agencies have lowered the optimal amount of fluoride in the water system for the health of individuals, the Cabinet must do the same to ensure the protection of public health in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: By amending the administrative regulation to be consistent with federal recommendations, the Cabinet is ensuring the protection of the health of the individual citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 206 water systems in the Commonwealth that adjust the fluoride level in the water. Those water systems and the communities they serve 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 questions (3) will have to take to comply with this administrative regulation or amendment: The water systems will need to turn down their pumps to feed less fluoride into the water. No action is required on the part of the public they serve.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no increase in costs associated with this amendment. Water systems will save money by reducing the amount of fluoride put into water.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected water systems will save money by reducing the amount of fluoride put into the water. It's estimated they'll save a total of about \$585,000 per year across the state. More importantly, the United States Centers for Disease Control and Prevention, Department of Health and Human Services, and Environmental Protection Agency recommend an optimal fluoride level of seven tenths (0.7) ppm in the water for the health of the public. Therefore, the Cabinet believes that the health of the Commonwealth will be better protected as a result of compliance with this amendment.

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

(a) Initially: There are no costs to implement this amendment.

(b) On a continuing basis: There are no costs to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no increase to administer this program because of this amendment. The monitoring of this program is currently funded through Cabinet general funds and no increase in funding is expected or needed because of this amendment. The funding of the actual fluoridation of the water is a cost born by the water systems affected by this administrative regulation. This amendment is expected to save affected water systems a total of \$585,000 per year across the state.

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

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

(9) TIERING: Is tiering applied? Yes, water systems serving a population larger than 3,000 are required to adjust fluoride-deficient waters, whereas water systems serving a population smaller than 3,000 shall provide supplemental fluoridation only if adequate fluoride feed equipment is available from the Cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department for Public Health is the only government directly affected by this administrative regulation and no action is required other than the continued maintenance of the fluoridation program.

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) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.190(11) requires the Cabinet to provide public health services including the establishment, maintenance, monitoring, and enforcement of water fluoridation programs for the protection of dental health. This administrative regulation provides for water fluoridation programs

and contains the requirements for such programs. This amendment reflects federal changes in the optimal amount of fluoride content in water.

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 generates no 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 generates no revenue.

(c) How much will it cost to administer this program for the first year? This program is not new. The amendment adds no costs to the program.

(d) How much will it cost to administer this program for subsequent years? There is no increase to administer this program because of this amendment. The monitoring of this program is currently funded through Cabinet general funds and no increase in funding is expected or needed because of this amendment. The funding of the actual fluoridation of the water is a cost born by the water systems affected by this administrative regulation. This amendment is expected to save affected water systems a total of \$585,000 per year across the state.

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

Revenues (+/-):

Expenditure (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 1:026. Dental services' coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a-d[; Pub.L. 109-174]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the 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[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of provisions relating to dental services.

Section 1. Definitions. (1) "Comprehensive orthodontic" means a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(3) "Debridement" means a preliminary procedure that:

(a) Entails the gross removal of plaque and calculus that interfere with the ability of a dentist to perform a comprehensive oral evaluation; and

(b) Does not preclude the need for further procedures[a procedure that is performed:

(a) For removing thick or dense deposits on the teeth which is required if tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or gum disease]; and

(c) Is separate[(b) Separately] from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(5) "Direct practitioner contact" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(6) "Disabling malocclusion" means[that a patient has] a condition that meets the criteria established in Section 13(7) of this administrative regulation.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(9) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1.;

(a) Requires little additional practitioner resources; or

2. [(b)] Is clinically integral to the performance of the primary procedure.

(10) [(8)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(11) "Locum tenens dentist" means a substitute dentist:

(a) Who temporarily assumes responsibility for the professional practice of a dentist participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating dentist's provider number.

(12) "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.

(13) [(9)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(14) [(40)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(15) [(44)] "Other licensed medical professional" or "OLMP" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.

(16) [(42)] "Prepayment review" or "PPR" means a departmental review of a claim regarding a recipient who is not enrolled with a managed care organization to determine if the requirements of this administrative regulation have been met prior to authorizing payment.

(17) [(43)] "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(18) [(44)] "Provider" is defined in KRS 205.8451(7).

(19) "Public health hygienist" means an individual who:

(a) Is a dental hygienist as defined in KRS 313.010(6);

(b) Meets the public health hygienist requirements established in KRS 313.040(8);

(c) Meets the requirements for a public health registered dental hygienist established in 201 KAR 8:562; and

(d) Is employed by or through:

1. The Department for Public Health; or

2. A governing board of health.

(20) [(45)] "Recipient" is defined in KRS 205.8451(9).

(21) [(46)] "Resident" is defined in 42 C.F.R. 415.152.

(22) [(47)] "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation. (1) A participating provider shall:

(a) Be licensed as a provider in the state in which the practice is located;

~~(b) [(2) A participating provider shall]~~ Comply with the terms and conditions established in the following administrative regulations:

1. ~~[(a)]~~ 907 KAR 1:005;

2. ~~[(b)]~~ 907 KAR 1:671; and

3. ~~[(c)]~~ 907 KAR 1:672;

~~(c) [(~~

~~(3) A participating provider shall]~~ Comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

~~(d) Comply with all applicable state and federal laws.~~

~~(2)(a) [(4)] A participating provider shall:~~

1. Have the freedom to choose whether to accept an eligible Medicaid recipient; and

2. ~~[(shall)]~~ Notify the recipient of the decision prior to the delivery of service.

~~(b) If the provider accepts the recipient, the provider:~~

1. ~~[(a)]~~ Shall bill Medicaid rather than the recipient for a covered service;

2. ~~[(b)]~~ May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and

3. ~~[(c)]~~ Shall not bill the recipient for a service that is denied by the department for:

a. ~~[(1)]~~ Being:

i. ~~[(a)]~~ Incidental;

ii. ~~[(b)]~~ Integral; or

iii. ~~[(c)]~~ Mutually exclusive;

b. ~~[(2)]~~ Incorrect billing procedures, including incorrect bundling of procedures;

c. ~~[(3)]~~ Failure to obtain prior authorization for the service; or

d. ~~[(4)]~~ Failure to meet timely filing requirements.

(3)(a) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(b) A provider of a service to an enrollee shall be enrolled in the Medicaid Program.

(4)(a) If a provider receives any duplicate or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

Section 3. Record Maintenance. (1)(a) A provider shall maintain comprehensive legible medical records which substantiate the services billed.

(b) A dental record shall be considered a medical record.

(2) A medical record shall be signed on the date of service by the:

(a) Provider; or

(b) Other practitioner authorized to provide the service in accordance with:

1. KRS 313.040; and

2. 201 KAR 8:562 ~~and dated to reflect the date of service~~].

(3) An X-ray shall be:

(a) Of diagnostic quality; and

(b) Maintained in a manner that identifies [shall include] the:

1. ~~[(a)]~~ Recipient's name;

2. ~~[(b)]~~ Service date; and

3. ~~[(c)]~~ Provider's name.

(4) A treatment regimen shall be documented to include:

(a) Diagnosis;

(b) Treatment plan;

(c) Treatment and follow-up; and

(d) Medical necessity.

(5) Medical records, including X-rays, shall be maintained in accordance with 907 KAR 1:672 ~~[(Section 4(3) and (4))]~~.

Section 4. General and Certain Service Coverage Requirements. (1) A covered service shall be:

(a) Medically necessary; and

(b) Except as provided in subsection (3) ~~[(2)]~~ of this section, furnished to a recipient through direct practitioner contact.

(2) Dental visits shall be limited to twelve (12) visits per year; and

~~(c) Unless a recipient's provider demonstrates that dental services in excess of the following service limitations are medically necessary, limited to:~~

1. ~~Two (2) prophylaxis per twelve (12) month period for a recipient under age twenty-one (21);~~

2. ~~One (1) dental visit per month] per provider for a recipient who is at least [age] twenty-one (21) years of age [and over; and~~

3. ~~One (1) prophylaxis per twelve (12) month period for a recipient age twenty-one (21) years and over].~~

(3) [(2)] A covered service provided by an [individual who meets the definition of] other licensed medical professional shall be covered if the:

(a) OLMP [Individual] is employed by the supervising oral surgeon, dentist, or dental group;

(b) OLMP [Individual] is licensed in the state of practice; and

(c) Supervising provider has direct practitioner contact with the recipient, except for a service provided by a dental hygienist if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.040 ~~[(313.310)]~~.

(4) [(3)] (a) A medical resident may provide and the department shall cover services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(b) A dental resident, student, or dental hygiene student may provide and the department shall cover services under the direction of a program participating provider in or affiliated with an American Dental Association accredited institution.

(5) Services provided by a locum tenens dentist shall be covered:

(a) If the locum tenens dentist:

1. Has a national provider identifier (NPI) and provides the NPI to the department;

2. Does not have a pending criminal or civil investigation regarding the provision of services;

3. Is not subject to a formal disciplinary sanction from the Kentucky Board of Dentistry; and

4. Is not subject to any federal or state sanction or penalty that would bar the dentist from Medicare or Medicaid participation; and

(b) For no more than sixty (60) continuous days.

(6) Preventative services provided by a public health hygienist shall be covered.

(7) The department shall cover the oral pathology procedures listed on the DMS Dental Fee Schedule if provided by an oral pathologist who meets the condition of participation requirements established in Section 2 of this administrative regulation.

(8) [(4)] Coverage shall be limited to the procedures or services:

(a) Identified on the DMS Dental Fee Schedule; or

(b) Established in this administrative regulation.

(9) The department shall not cover a service provided by a provider or practitioner that exceeds the scope of services established for the provider or practitioner in:

(a) Kentucky Revised Statutes; or

(b) Kentucky administrative regulations [in 907 KAR 1:626,

Section 3, in the following CDT categories:

(a) Diagnostic;

(b) Preventive;

(c) Restorative;

(d) Endodontics;

(e) Periodontics;

- (f) Removable prosthodontics;
- (g) Maxillofacial prosthetics;
- (h) Oral and maxillofacial surgery;
- (i) Orthodontics; or
- (j) Adjunctive general services].

Section 5. Diagnostic Service Coverage Limitations. (1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.

(b) The department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis to an individual under twenty-one (21) years of age.

(c) A comprehensive oral evaluation shall not be covered in conjunction with the following:

1. A limited oral evaluation for trauma related injuries;
2. A space maintainer[~~maintainers~~];
- 3.[~~Root canal therapy~~];
- 4.[~~Denture relining~~];
4. A[5.] transitional appliance[~~appliances~~];
- 5.[6.] A prosthodontic service;
- 6.[7.] Temporomandibular joint therapy;
- 7.[8.] An orthodontic service;
- 8.[9.] Palliative treatment;[~~or~~]
9. An extended care facility call;
10. A house[~~hospital~~] call; or
11. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:

1. Be limited to a trauma related injury or acute infection; and
2. Be limited to one (1) per date of service, per recipient, per provider; and
3. Require a prepayment review.

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:

1. A periapical X-ray;
2. A bitewing X-ray[~~X-rays~~];
3. A panoramic X-ray;
4. Resin, anterior;
5. A simple or surgical extraction;
6. Surgical removal of a residual tooth root;
7. Removal of a foreign body;
8. Suture of a recent small wound;
9. Intravenous sedation; or
10. Incision and drainage of infection.

(3)(a) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiograph service:

1. Bitewing X-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider;
2. Periapical X-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider;
3. An intraoral complete X-ray series shall be limited to one (1) per twenty-four (24)[~~twelve (12)~~] month period, per recipient, per provider;
4. Periapical and bitewing X-rays shall not be covered in the same twelve (12) month period as an intraoral complete X-ray series per recipient, per provider;
5. A panoramic film shall:
 - a. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and
 - b. Require prior authorization in accordance with Section 15(1), (2), and (3) of this administrative regulation for a recipient under the age of six (6) years;
6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; or
7. A cephalometric and panoramic X-ray[~~X-rays~~] shall not be covered separately in conjunction with a comprehensive orthodontic consultation.

(b) The limits established in paragraph (a) of this subsection shall not apply to:

1. An X-ray necessary for a root canal or oral surgical procedure; or
2. An X-ray that:
 - a. Exceeds the established service limitations; and

b. Is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations. (1)(a) Coverage of a prophylaxis shall be limited to:

1. For an individual who is at least twenty-one (21) years of age[~~and over~~], one (1) per twelve (12) month period, per recipient; and

2. For an individual under twenty-one (21) years of age, two (2) per twelve (12) month period, per recipient.

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or root planing.

(2)(a) Coverage of a sealant shall be limited to:

1. A recipient of the age five (5) through twenty (20) years;
2. Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and
3. An occlusal surface that is noncavitated[~~noncarious~~].

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same date of service.

(3)(a) Coverage of a space maintainer shall:

1. Be limited to a recipient under the age of twenty-one (21) years; and

2. Require the following:

- a. Fabrication;
- b. Insertion;
- c. Follow-up visits;
- d. Adjustments; and
- e. Documentation in the recipient's medical record to:

(i) Substantiate the use for maintenance of existing interdental[~~intertooth~~] space; and

(ii) Support the diagnosis and a plan of treatment that includes follow-up visits.

(b) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination of the two (2)[~~thereof~~] shall not exceed two (2) per twelve (12) month period, per recipient.

Section 7. Restorative Service Coverage Limitations. (1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall[~~be~~]:

(a) Be limited to a recipient under the age of twenty-one (21) years; and

(b) Include[~~Inclusive—of~~] any procedure performed for restoration of the same tooth.

(3) Coverage of a pin retention procedure shall be limited to:

- (a) A permanent molar;
- (b) One (1) per tooth, per date of service, per recipient; and
- (c) Two (2) per permanent molar, per recipient.

(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:

- (a) An amalgam encompassing[~~;~~] three (3) or more surfaces;
- (b) A permanent prefabricated resin crown; or
- (c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations. (1) Coverage of the following endodontic procedures shall be limited to a recipient under the age of twenty-one (21) years:

- (a) A pulp cap direct;
- (b) Therapeutic pulpotomy; or
- (c) Root canal therapy.

(2) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

(3)(a) Coverage of root canal therapy shall require:

1. Treatment of the entire tooth;
2. Completion of the therapy; and
3. An x-ray taken before and after completion of the therapy.

(b) The following root canal therapy shall not be covered:

1. The Sargenti method of root canal treatment; or

2. A root canal on one (1) root of a multi-rooted tooth[molar].

Section 9. Periodontic Service Coverage Limitations. (1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:

- (a) A recipient with gingival[gingival] overgrowth due to a:

1. Congenital condition;
2. Hereditary condition; or
3. Drug-induced condition; and

- (b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.

1. Coverage of a quadrant procedure shall require a minimum of a four (4)[~~three (3)~~] tooth area within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than three (3)[~~two (2)~~] teeth within the same quadrant.

(2) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:

- (a) Pocket-depth measurements;
- (b) A history of nonsurgical services; and
- (c) A prognosis.

(3) Coverage for a periodontal scaling and root planing procedure shall:

- (a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;

- (b) Require prior authorization in accordance with Section 15(1), (2), and (4) of this administrative regulation; and

- (c) Require documentation to include:

1. A periapical film or bitewing X-ray;[and]
2. Periodontal charting of preoperative pocket depths; and
3. A photograph if applicable.

- (4)(a) Coverage of a quadrant procedure shall require a minimum of a four (4)[~~three (3)~~] tooth area within the same quadrant.

- (b) Coverage of a per-tooth procedure shall be limited to no more than three (3) teeth.

(5) Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.

- (6)(a) A full mouth debridement shall only be covered for a pregnant woman.

- (b) More than[Only] one (1) full mouth debridement per pregnancy shall not be covered.

Section 10. Prosthodontic Service Coverage Limitations. (1) A removable prosthodontic or denture repair shall be limited to a recipient under the age of twenty-one (21) years.

(2) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:

- (a) Repair resin denture base; or
- (b) Repair cast framework.

(3) Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:

- (a) Replacement of a broken tooth on a denture;
- (b) Laboratory relining of:
 1. Maxillary dentures; or
 2. Mandibular dentures;
- (c) An interim maxillary partial denture; or
- (d) An interim mandibular partial denture.

(4) An interim maxillary or mandibular partial denture shall be limited to use:

- (a) During a transition period from a primary dentition to a permanent dentition;
- (b) For space maintenance or space management; or
- (c) As interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board eligible or board certified-prosthodontist:

- (1) A nasal prosthesis;
- (2) An auricular prosthesis;
- (3) A facial prosthesis;
- (4) A mandibular resection prosthesis;
- (5) A pediatric speech aid;
- (6) An adult speech aid;

- (7) A palatal augmentation prosthesis;
- (8) A palatal lift prosthesis;
- (9) An oral surgical splint; or
- (10) An unspecified maxillofacial prosthetic.

Section 12. Oral and Maxillofacial Service Coverage Limitations. (1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall:

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a four (4)[~~three (3)~~] tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

(a) Be covered for temporomandibular joint therapy;

(b) Require prior authorization in accordance with Section 15(1), (2), and (5) of this administrative regulation;

(c) Be limited to a recipient under the age of twenty-one (21) years; and

(d) Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to two (2)[~~one (1)~~] per date of service.

(7) Coverage shall be limited to one (1) per lifetime, per recipient, for removal of the following:

- (a) Torus palatinus (maxillary arch);
- (b) Torus mandibularis (lower left quadrant); or
- (c) Torus mandibularis (lower right quadrant).

(8)(a) A dental service that is covered by the Kentucky Medicaid Program and provided by an oral surgeon shall be reimbursed in accordance with 907 KAR 1:626 unless the given service is:

1. Not reimbursed pursuant to 907 KAR 1:626; and

2. Reimbursed pursuant to 907 KAR 3:010.

(b) A dental service that is covered by the Kentucky Medicaid Program and provided by an oral surgeon but not reimbursed pursuant to 907 KAR 1:626 shall be reimbursed in accordance with 907 KAR 3:010[Except as specified in subsection (9) of this section, a service provided by an oral surgeon shall be covered in accordance with 907 KAR 3:005.

(9) If performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:

- (a) Extractions;
- (b) Impactions; and
- (c) Surgical access of an unerupted tooth].

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

(a) Be limited to a recipient under the age of twenty-one (21) years; and

(b) Require prior authorization except as established in Section 15(1)(b) of this administrative regulation.

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) The department shall only cover new orthodontic brackets or appliances.

(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to[~~-4-~~] the correction of a disabling malocclusion for transitional, full permanent dentition, or;~~or~~

2. Transitional or full permanent dentition unless for treatment of a cleft palate or severe facial anomaly.

(7) A disabling malocclusion shall;

(a) Exist if a patient:

1. Exhibits a severe~~(a) Has a deep impinging~~ overbite encompassing one (1) or more teeth in~~that shows~~ palatal impingement diagnosed by a lingual view of orthodontic models (stone or digital) showing palatal soft tissue contact~~(the majority of the lower incisors);~~

2. Exhibits~~(b) Has~~ a true anterior open bite, either skeletal or habitual in nature, that if left untreated will result in:

a. The open bite persisting; or

b. A medically documented speech impediment;

3.~~(does not include:~~

1. One (1) or two (2) teeth slightly out of occlusion; or

2. Where the incisors have not fully erupted;

e.) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III);

a.~~(i) Dental or skeletal~~); and

b. If skeletal, requires a traced cephalometric radiograph showing significant skeletal malocclusion;

4.~~(d) Has an anterior crossbite that involves:~~

a.~~(1) More than two (2) teeth within the same arch~~~~(in crossbite); or~~

b. A single tooth crossbite if there is evident detrimental changes in supporting tissues including:

i.~~(2) Obvious gingival stripping; or~~

ii) A functional shift of the mandible or severe dental attrition for an individual under the age of twelve (12) years~~(3. Recession related to the crossbite); or~~

c. An edge to edge crossbite if there is severe dental attrition due to a traumatic occlusion;

5.~~(e) Demonstrates a~~ handicapping posterior transverse discrepancy;

a. Involving at least two (2) posterior teeth; and

b. Demonstrating:

i) An arch collapse;

ii) A lateral functional shift;

iii) A skeletal restriction; or

iv) A~~discrepancies which:~~

1. May include several teeth, one (1) of which shall be a molar; and

2. Is handicapping in a function fashion as follows:

a. Functional shift;

b. Facial asymmetry;

c. complete buccal or lingual crossbite;

6. Demonstrates a medically documented speech pathology resulting from the malocclusion~~or~~

d. Speech concern);

7. Demonstrates~~(f) Has~~ a significant posterior open bite that does not involve:

a.~~(1) Partially erupted teeth; or~~

b.~~(2) One (1) or two (2) teeth slightly out of occlusion;~~

8.~~(g) Except for third molars, demonstrates an~~~~has~~ impacted tooth~~teeth~~ that;

a. Will not erupt into the arch~~arches~~ without orthodontic or surgical intervention; and

b. i) Shows a documented pathology; or

ii) Poses a significant threat to the integrity of the remaining dentition or to the health of the patient;

9.~~(h) Has an extreme overjet in excess of eight (8)~~~~to nine (9)~~ millimeters and one (1) of the skeletal conditions specified in subparagraphs 1 through 8~~(paragraphs (a) through (g))~~ of this paragraph~~(subsection);~~

10.~~(i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures~~; and does not include simple loss of teeth with no other affects;

11.~~(j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion; or~~

12.~~(k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; and~~

(b) Not include:

1. One (1) or two (2) teeth being slightly out of occlusion;

2. Incisors not having fully erupted; or

3. A bimaxillary protrusion; or

(c) Exist if a patient~~(f)~~ has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch deformation.

(8) Coverage of comprehensive orthodontic treatment shall not include~~be inclusive of~~ orthognathic surgery.

(9) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) Documentation of the~~(A)~~ referral referenced in subsection (6) of this section~~(form, if applicable); and~~

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for the treatment provided.

(10) Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon compliance with~~(submission of)~~ the prior authorization requirements specified in Section 15~~(1), (2), and (7) of this administrative regulation if treatment:~~

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations.

(1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except for a radiograph~~(radiographs).~~

(2)~~(a)~~ Coverage of a hospital or ambulatory surgical center call or extended care facility call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call, ambulatory surgical center call, or extended care facility call shall not be covered in conjunction with:

1. Limited oral evaluation;

2. Comprehensive oral evaluation; or

3. Treatment of dental pain.

(3)(a) Coverage of intravenous sedation shall be limited to a recipient under the age of twenty-one (21) years.

(b) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1)(a) The prior authorization requirements established in this administrative regulation shall apply to services for a recipient who is not enrolled with a managed care organization.

(b) A managed care organization shall not be required to apply the prior authorization requirements established in this administrative regulation for a recipient who is enrolled with a managed care organization.

(c) Prior authorization shall be required for the following:

1.~~(a)~~ A panoramic film for a recipient under the age of six (6) years;

2.~~(b)~~ Periodontal scaling and root planing;

3.~~(c)~~ An occlusal orthotic device;

4.~~(d)~~ A preorthodontic treatment visit;

5.~~(e)~~ Removable appliance therapy;

6.~~(f)~~ Fixed appliance therapy; or

7.~~(g)~~ A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:

(a) A MAP-9, Prior Authorization for Health Services;

(b) Additional forms or information as specified in subsections (3) through (7) of this section; and

(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) Panoramic film or intraoral complete series; and

(c) Dental models or the digital equivalent of dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;

(c) A cephalometric X-ray[x-rays] with tracing;

(d) A panoramic X-ray;

(e) Intraoral and extraoral facial frontal and profile pictures;

(f) An occluded and trimmed dental model or the digital equivalents of a model[model];

(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required;

(h) After six (6) monthly visits are completed, but not later than twelve (12) months after the banding date of service:

1. A MAP 559, Six (6) Month Orthodontic Progress Report; and

2. An additional MAP 9, Prior Authorization for Health Services; and

(i) Within three (3) months following completion of the comprehensive orthodontic treatment:

1. Beginning and final records; and

2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(8) Upon receipt and review of the materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(9) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(10)(a) Prior authorization shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(11) Upon review and determination by the department that removing a prior authorization requirement shall be in the best interest of a Medicaid recipient[recipients], the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

Section 16. 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 dental service provider 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 provider'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 provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 17. Auditing Authority. (1) The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(a) Claim;

(b) Medical record; or

(c) Documentation associated with any claim or medical record.

(2) A dental record shall be considered a medical record.

Section 18. Federal Approval and Federal Financial Participation. The coverage provisions and requirements established in 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 of the coverage.

Section 19. Appeal Rights.[(1)] An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization[based upon an application of this administrative regulation] shall be in accordance with 907 KAR 1:563.

Section 20[(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

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

(a) "MAP 9, Prior Authorization for Health Services", December 1995[edition];

(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement", December 1995[edition];

(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form", December 1995[edition];

(d) "MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form", March 2001[edition];

(e) "MAP 559, Six (6) Month Orthodontic Progress Report", December 1995[edition];[and]

(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission", December 1995; and

(g) "DMS Dental Fee Schedule", June 2015[edition].

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

(a)[-] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site located at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015 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 by July 14, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental 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 the Kentucky Medicaid Program provisions and requirements regarding the coverage of dental 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: Amendments include altering the definition of debridement; inserting a definition of electronic signature and inserting electronic signature usage requirements; inserting a definition of locum tenens dentist and establishing Medicaid coverage of dental services provided by locum tenens dentists; inserting a definition of public health hygienist and establishing Medicaid coverage of dental services provided by public health hygienists; inserting general program integrity and records maintenance requirements; replacing the limit of one (1) dental visit per month to twelve (12) per year; incorporating by reference a dental fee schedule which lists covered procedures; allowing root canal therapy to be provided in conjunction with a comprehensive oral examination; establishing that a comprehensive oral evaluation shall not be covered in conjunction with an extended care facility; establishing that an intraoral complete x-ray series shall be limited to one (1) per twenty-four (24) months rather than per twelve (12) months; not covering a root canal on just one (1) root of a multi-rooted tooth; requiring a quadrant procedure to span at least four (4) teeth rather than three (3); requiring a per-tooth procedure to be limited to no more than three (3) teeth within the same quadrant rather than two (2); eliminating the requirement for prepayment review for a limited oral evaluation; instead of only covering maxillofacial prosthetic services provided by a board certified prosthodontist paying for such procedures if performed by a board eligible prosthodontist (as well as board-certified prosthodontist); clarifying that a medical record shall be signed on the date of service and that another licensed medical professional can sign a medical record; clarifying that the Kentucky Medicaid Program will cover a second periodic examination per twelve (12) months [for those under twenty-one (21)] if the examination is provided in conjunction with a prophylaxis; clarifying that a cephalometric and panoramic x-ray shall not be covered separately in conjunction with a complete orthodontic consultation; establishing that required documentation shall include a photograph if applicable; clarifying policy regarding a disabling malocclusion; allowing for the digital equivalent of dental models to be used for prior authorization purposes; establishing that a dental service provided by an oral surgeon shall be reimbursed per the Medicaid dental reimbursement administrative regulation (907 KAR 1:626) unless there is no reimbursement for the service per that administrative regulation - in which case it will be reimbursed per the Medicaid physician's reimbursement regulation (907 KAR 3:010); and additional clarifications.

(b) The necessity of the amendment to this administrative regulation: The amendment that establishes that paying for dental services provided by oral surgeons per the dental reimbursement regulation if the dental reimbursement regulation contains a rate for the service (rather than the physicians' reimbursement regulation) is necessary to ensure consistency of payment among provider types; altering the definition of debridement is necessary to comport with the current dental terminology (CDT) description of debridement; authorizing the use of electronic signatures is necessary to modernize requirements; requiring a medical record to be signed on the date of service is necessary to strengthen program integrity; clarifying that a licensed medical professional other than the provider may sign the medical record is necessary to comport with Kentucky law and the Board of Dentistry regulation establishing dental hygienist requirements (201 KAR 8:562); covering an extra periodic examination within twelve (12) months if provided in conjunction with a prophylaxis [for individuals under twenty-one (21)] is necessary to conform with American Association of Pediatric Dentistry guidelines; establishing that a comprehensive oral evaluation shall not be covered as part of an extended care facility call is necessary as such an evaluation is appropriately performed in a dental office with all necessary equipment available; changing the limit of limited oral x-rays from one (1) per twelve (12) months to one (1) per twenty-four (24) months is necessary as more frequent of such x-rays is inappropriate and unnecessary; clarifying that a cephalometric and panoramic x-ray shall not be covered separately in conjunction with a complete orthodontic consultation is necessary as such a x-ray is appropriately encompassed in the complete consultation rather than unbundled as a separate service; establishing that required documentation shall include a photograph if applicable is necessary for program integrity and enhancing the recipient's medical record; the revision regarding a disabling malocclusion is necessary to clarify policy/language; allowing for a digital equivalent of dental models is necessary to modernize in accord with new technology; establishing that DMS won't cover a root canal on just one (1) root of a multi-rooted tooth is necessary to prevent inappropriate utilization; requiring a quadrant procedure to span at least four (4) teeth rather than three (3) is necessary to comport with the relevant current dental terminology (CDT) code requirements for the procedure; requiring a per-tooth procedure to be limited to no more than three (3) teeth within the same quadrant rather than two (2) is necessary to comport with the relevant current dental terminology (CDT) code requirements for the procedure; creating a locum tenens option for dentists and covering preventive services by public health hygienists is necessary to expand/enhance the Medicaid provide base; allowing root canal therapy to be provided in conjunction with a comprehensive oral examination is necessary as it is appropriate for an individual to receive the therapy at the same time as an examination and would increase the likelihood of the recipient receiving the service rather than asking the recipient to return on another day for the therapy; eliminating the prepayment review requirement for a limited oral examination is necessary as the exams are necessary in the circumstance and prepayment review would be an unnecessary burden; and other amendments or clarifications are necessary to reflect current practice.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying policies, accommodating the use of new technology, enhancing program integrity, adopting policies consistent with the industry standards, and by adopting policies appropriate for eliminating unnecessary utilization of services.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by clarifying policies, accommodating the use of new technology, enhancing program integrity, adopting policies consistent with the industry standards, and by adopting policies appropriate for eliminating unnecessary utilization of services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid-participating dental service

providers will be affected by the amendments. Currently, there are 1,078 individual dentists, 158 group dental practices, sixty-nine (69) individual physicians who perform oral surgery, and nine (9) group physician practices that perform oral surgery enrolled in Kentucky's Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Dental providers will need to ensure that they provide services within the limits established in the administrative regulation if they wish to be reimbursed for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Dental providers will benefit from the Medicaid provisions comporting with current dental terminology (CDT) guidelines and from modernizing coverage to include coverage of the digital equivalent of dental models. Oral pathologists will benefit from DMS expanding coverage to include oral pathology services/procedures. Recipients will benefit from root canal therapy being covered in conjunction with an oral examination rather than the recipient having to reappear at the dental office on another day to receive the therapy.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments.

(b) On a continuing basis: DMS anticipates no additional costs as a result of the amendments.

(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 the amendment to 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 provisions apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(3)

2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Coverage of dental services is not mandated on Medicaid programs except through the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21.)

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 statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 U.S.C. 1396d(r)(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? The Department for Medicaid Services anticipates no additional costs as a result of the amendments.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services anticipates no additional costs as a result of the amendments.

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 (Amendment)

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.100, 447.200-205, 42 U.S.C. 1396a-d

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 the 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[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the reimbursement policies and requirements for covered dental services provided to a Medicaid recipient who is not enrolled with a managed care organization[method for determining the amount payable by the cabinet for a dental service].

Section 1. Definitions. (1) ~~["Comprehensive—orthodontic procedure" means a medically necessary dental service for a~~

dentofacial malocclusion which requires the application of braces for correction.

(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.

(2)(3) "Debridement" means a procedure that is performed:

(a) For removing thick or dense deposits on the teeth which is required if tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or gum disease; and

(b) Separately from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

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

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4)(5) "Disabling malocclusion" means that a patient has a condition that meets the criteria established in 907 KAR 1:026, Section 13(7).

(6) "Incidental" means that a medical procedure;

(a) Is performed at the same time as a primary procedure; and

(b) 1.;

(a) Requires little additional practitioner resources; or

2.(b) Is clinically integral to the performance of the primary procedure.

(5)(7) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(6) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(7)(8) "Manually priced" or "MP" means that a procedure is priced according to complexity.

(8)(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9)(10) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CDT codes; or

(d) Are described in CDT as inappropriate coding of procedure combinations.

(10)(11) "Prepayment review" or "PPR" means a departmental review of a claim to determine if the requirements established in 907 KAR 1:026 have been met prior to authorizing payment.

(12) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(13) "Provider" is defined in KRS 205.8451(7).

(11)(14) "Recipient" is defined in KRS 205.8451(9).

(12)(15) "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(13)(16) "Usual and customary charge" means the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. General Requirements. For the department to reimburse for a dental service or item, the service or item shall be:

(1) Provided:

(a) To a recipient; and

(b) By a provider who meets the conditions of participation requirements established in 907 KAR 1:026;

(2) Covered in accordance with 907 KAR 1:026;

(3) Medically necessary; and

(4) A service or item authorized within the scope of the provider's licensure.

Section 3. Reimbursement. (1) Except as established in Section 4 or 5 of this administrative regulation, reimbursement for a covered service shall be the lesser of the:

(a) Dentist's usual and customary charge;

(b) Reimbursement limits specified in this section[Sections 3 and 4 of this administrative regulation];

(c) Manually-priced amount; or

(d) Amount established on the DMS Dental Fee Schedule[Prior authorized fee].

(2) If a rate has not been established for a covered dental service, the department shall set an upper limit for the procedure by:

(a) Averaging the reimbursement rates assigned to the service by three (3) other payer or provider sources; and

(b) Comparing the calculated average obtained from these three (3) rates to rates of similar procedures paid by the department.

(3) If cost sharing is required, the cost sharing shall be in accordance with 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) A service which is not billed within timely filing requirements shall not be reimbursed.

(6) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

Section 3. Reimbursement Rates for Dental Services. (1) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient under twenty-one (21) years of age:

Kentucky Medicaid Dental Services		
Description	Upper Limit	Authorization Requirement
Diagnostic Procedures		
Limited oral evaluation (trauma related injuries or acute infection only)	\$33	PPR required
Comprehensive oral evaluation	\$26	-
Intraoral complete series	\$63.70	-
Intraoral periapical, first film	\$10.40	-
Intraoral periapical, each additional film	\$7.80	-
Bitewing, single film	\$9.10	-
Bitewing, 2 films	\$18.20	-
Bitewing, 4 films	\$29.90	-
Panoramic film	\$39	PA required for ages 5 and under
Cephalometric film	\$61.10	-
Preventative Procedures		
Prophylaxis	\$48.10	-
Sealant per tooth (ages 5-20)	\$19.50	-

Space maintainer, fixed unilateral	\$135.20	-
Space maintainer, fixed bilateral	\$262.60	-
Space maintainer, removable unilateral	\$134	-
Space maintainer, removable bilateral	\$202	-
Restorative Procedures		
Amalgam, 1 surface	\$49.40	-
Amalgam, 2 surfaces	\$65.00	-
Amalgam, 3 surfaces	\$76.70	-
Amalgam, 4 or more surfaces	\$93.60	-
Resin, 1 surface, anterior	\$57.20	-
Resin, 2 surfaces, anterior	\$71.50	-
Resin, 3 surfaces, anterior	\$85.80	-
Resin, 4 or more surfaces, anterior	\$101.40	-
Resin, 1 surface, posterior	\$57.20	-
Resin, 2 surfaces, posterior	\$71.50	-
Resin, 3 surfaces, posterior	\$85.80	-
Resin, 4 or more surfaces, posterior	\$101.40	-
Prefab stainless steel crown primary	\$119.60	-
Prefab stainless steel crown permanent	\$133.90	-
Prefab resin crown	\$113.10	-
Pin retention, per tooth, in add. to restoration	\$13	-
Endodontic Procedures		
Pulp cap direct	\$17	-
Therapeutic pulpotomy	\$67.60	-
Root canal therapy anterior	\$274.30	-
Root canal therapy bicuspid	\$344.50	-
Root canal therapy molar	\$481	-
Apicoectomy anterior	\$201.50	-
Apicoectomy, bicuspid first root	\$201.50	-
Apicoectomy, molar first root	\$201.50	-
Replace missing or broken tooth on denture	\$40.30	-
Apicoectomy, per tooth each additional root	\$197	-
Periodontic Procedures		
Gingivectomy, gingivoplasty per quadrant	\$336.70	PPR required
Gingivectomy, gingivoplasty per tooth	\$135.20	PPR required
Periodontal scaling and root planing per quadrant	\$101.40	PA required
Full mouth debridement	\$68.50	Pregnant women only
Removable Prosthodontic Procedures		
Repair resin denture base	\$61.10	-
Repair cast framework	\$97.50	-
Replace broken teeth, per tooth on a denture	\$36.40	-
Reline complete maxillary denture	\$128.70	-
Reline complete mandibular denture	\$128.70	-
Interim partial upper	\$319.80	-
Interim partial lower	\$336.70	-
Maxillofacial Prosthetic Procedures		
Nasal prosthesis	\$2,036	-
Auricular prosthesis	\$1,881	-
Facial prosthesis	\$3,408	-
Obturator (temporary)	\$1121.90	-
Obturator (permanent)	\$1,992	-
Mandibular resection prosthesis	\$1,660	-
Speech aid-pediatric (13 and under)	\$2,036	-
Speech aid (14 - 20)	\$2,036	-
Palatal augmentation prosthesis	\$1,550	-
Palatal lift prosthesis	\$1,836	-
Oral surgical splint	\$896	-
Unspecified maxillofacial prosthetic procedure	MP	PPR required
Oral and Maxillofacial Surgery Procedures		
Extraction, deciduous tooth	\$49.40	-
Extraction, erupted tooth or exposed root	\$49.40	-
Surgical removal of erupted tooth	\$93.60	-
Removal of impacted tooth (soft tissue)	\$127.40	-
Removal of impacted tooth (partially bony)	\$179.40	-

Removal of impacted tooth (completely bony)	\$215.80	-
Removal of impacted tooth (comp. bony or unusual)	\$222.30	-
Removal of torus palatinus (maxillary arch)	\$302.47	
Removal of torus mandibularis (lower left quadrant)	\$209.28	
Removal of torus mandibularis (lower right quadrant)	\$209.28	
Surgical access of an unerupted tooth	MP	PPR required
Surgical removal of residual tooth roots	\$107.90	-
Oroantral fistula closure	\$135.20	-
Alveoplasty in conjunction with extraction per quadrant	\$101.40	-
Alveoplasty not in conjunction with extraction per quadrant	\$101.40	-
Excision of benign lesion	\$87.10	-
Incision and drainage of abscess (intraoral)	\$67.60	-
Incision and drainage of abscess (extraoral)	\$80.60	-
Removal of foreign body	\$201.50	-
Temporomandibular splint therapy	\$424	PA required
Suture of recent small wound	\$67.60	-
Frenulectomy	\$167.60	-
Orthodontic Procedures		
Removable appliance therapy	\$362	PA required
Fixed appliance therapy	\$259	PA required
Preorthodontic exam and treatment plan	PA Fee	PA required
Orthodontic treatment	PA Fee	PA required
Unspecified orthodontic procedure-final 1/3	PA Fee	PA required
Adjunctive General Services		
Palliative treatment of dental pain	\$27.30	-
Intravenous sedation	\$158.60	-
Hospital call	\$67.60	-

(2) The following maximum upper limits for reimbursement shall apply for a service provided to a recipient twenty-one (21) years of age and older:

Kentucky Medicaid Dental Services		
Description	Upper Limit	Authorization Requirement
Diagnostic Procedures		
Limited oral evaluation (trauma related injuries only)	\$33	PPR required
Comprehensive oral evaluation	\$26	-
Intraoral complete series	\$49	-
Intraoral periapical, first film	\$8	-
Intraoral periapical, each additional film	\$6	-
Bitewing, single film	\$7	-
Bitewing, 2 films	\$14	-
Bitewing, 4 films	\$23	-
Panoramic film	\$39	-
Cephalometric film	\$47	-
Preventative Procedures		
Prophylaxis	\$37	-
Restorative Procedures		
Amalgam, 1 surface	\$38	-
Amalgam, 2 surfaces	\$50	-
Amalgam, 3 surfaces	\$59	-
Amalgam, 4 or more surfaces	\$72	-
Resin, 1 surface, anterior	\$44	-
Resin, 2 surfaces, anterior	\$55	-
Resin, 3 surfaces, anterior	\$66	-
Resin, 4 or more	\$78	-

surfaces, anterior		
Resin, 1 surface, posterior	\$44	-
Resin, 2 surfaces, posterior	\$55	-
Resin, 3 surfaces, posterior	\$66	-
Resin, 4 or more surfaces, posterior	\$78	-
Pin retention, per tooth, in add. to restoration	\$13	
Endodontic Procedures		
Apicoectomy anterior	\$155	-
Apicoectomy, bicuspid first root	\$155	-
Apicoectomy, molar first root	\$155	-
Apicoectomy, per tooth each additional root	\$197	-
Periodontic Procedures		
Full mouth debridement	\$68.50	Pregnant women only
Gingivectomy, gingivoplasty per quadrant	\$259	PPR required
Gingivectomy, gingivoplasty per tooth	\$104	PPR required
Periodontal scaling and root planing per quadrant	\$78	PA required
Maxillofacial Prosthetic Procedures		
Nasal prosthesis	\$2,036	-
Auricular prosthesis	\$1,881	-
Facial prosthesis	\$3,408	-
Obturator (temporary)	\$863	-
Obturator (permanent)	\$1,992	-
Mandibular resection prosthesis	\$1,660	-
Speech aid - Adult	\$2,036	-

Palatal augmentation prosthesis	\$1,550	-
Palatal lift prosthesis	\$1,836	-
Oral surgical splint	\$896	-
Unspecified maxillofacial prosthetic procedure	MP	PPR required
Oral and Maxillofacial Surgery Procedures		
Extraction, deciduous tooth	\$38	-
Extraction, erupted tooth or exposed root	\$38	-
Surgical removal of erupted tooth	\$72	-
Removal of impacted tooth (soft tissue)	\$98	-
Removal of impacted tooth (partially bony)	\$138	-
Removal of impacted tooth (completely bony)	\$166	-
Removal of impacted tooth (comp. bony or unusual)	\$171	-
Removal of torus palatinus (maxillary arch)	\$302.47	-
Removal of torus mandibularis (lower left quadrant)	\$209.28	-
Removal of torus mandibularis (lower right quadrant)	\$209.28	-
Surgical access of an unerupted tooth	MP	PPR required
Surgical removal of residual tooth roots	\$83	-
Oroantral fistula closure	\$104	-
Alveoplasty in conjunction with extraction per quadrant	\$78	-
Alveoplasty not in conjunction with extraction per quadrant	\$78	-
Excision of benign lesion	\$67	-
Incision and drainage of abscess (intraoral)	\$52	-
Incision and drainage of abscess (extraoral)	\$62	-
Removal of foreign body	\$155	-
Suture of recent small wound	\$52	-
Frenulectomy	\$129	-
Adjunctive General Services		
Palliative treatment of dental pain	\$24	-
Hospital call	\$52	-

(3) A comprehensive orthodontic procedure shall be reimbursed as follows:

(a) Except as specified in paragraph (b) of this subsection, an orthodontic consultation, including examination and development of a treatment plan, \$112;

(b) The Medicaid reimbursement rate for an orthodontic consultation shall not exceed fifty-six (56) dollars if:

1. The provider determines that comprehensive orthodontic treatment services are not needed;
2. The provider is unable or unwilling to provide the needed orthodontic treatment services; or

3. Prior authorization for comprehensive orthodontic services is not approved by the department or is not requested by the provider;

(c) A service for an early phase of moderately severe or severe disabling malocclusion:

1. \$1,367 for an orthodontist; or

2. \$1,234 for a general dentist;

(d) A service for a moderately severe disabling malocclusion:

1. \$1,825 for an orthodontist; or

2. \$1,659 for a general dentist; or

(e) A service for a severe disabling malocclusion:

1. \$3,000 total for an orthodontist; or

2. \$2,674 total for a general dentist.

(4) Reimbursement for comprehensive orthodontic treatment shall consist of two (2) payments:

(a) The first payment shall be two-thirds (2/3) of the prior authorized payment amount.

(b) The second payment shall:

1. Be one-third (1/3) of the prior authorized payment amount; and

2. Not be billed until six (6) monthly visits are completed following the banding date.

(c) The two (2) payments shall be inclusive of all services associated with the comprehensive orthodontic treatment.

Section] 4. Oral Surgeons. (1) A dental service that is covered by the Kentucky Medicaid Program and provided by an oral surgeon shall be reimbursed in accordance with this administrative regulation unless the given service is:

(a) Not reimbursed pursuant to this administrative regulation; and

(b) Reimbursed pursuant to 907 KAR 3:010.

(2) A dental service that is covered by the Kentucky Medicaid Program and provided by an oral surgeon but not reimbursed pursuant to this administrative regulation [Except for a service specified in 907 KAR 1:026, Section 12(8), a service provided by an oral surgeon] shall be reimbursed in accordance with 907 KAR 3:010.

Section 5. Supplemental Payments. (1) In addition to a payment made pursuant to Section 3 [Sections 2 through 4] of this administrative regulation, the department shall make a supplemental payment to a dental school faculty dentist who is employed by a state-supported school of dentistry in Kentucky.

(2) The supplemental payment shall be:

(a) In an amount which, if combined with other payments made in accordance with this administrative regulation, does not exceed the dentist's charge for a service that the dentist[he] has provided:

1. As a dental school faculty; and

2. For which the payment is made directly or indirectly to the dental school;

(b) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of dentistry in Kentucky; and

(c) Made on a quarterly basis.

Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with:

(1) This administrative regulation for a service covered pursuant to:

(a) 907 KAR 1:026; and

(b) This administrative regulation; or

(2) 907 KAR 3:010 for a service referenced in Section 5 of this administrative regulation that is reimbursed by the department in accordance with 907 KAR 3:010.

Section 7. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the reimbursement.

Section 8. Appeal Rights. An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 9. Incorporation by Reference. (1) "DMS Dental Fee Schedule", June 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law.

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site located at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015 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 by July 14, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies and requirements for covered dental services provided to a Medicaid recipient who is not enrolled with a managed care organization and optional policies for covered dental services provided to a Medicaid recipient who is enrolled with a managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement policies and requirements for covered dental services provided to a Medicaid recipient who is not enrolled with a managed care organization and optional policies for covered dental services provided to a Medicaid recipient who is enrolled with a managed care organization.

(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 reimbursement policies and requirements for covered dental services provided to a Medicaid recipient who is not enrolled with a managed care organization and optional policies for covered dental services provided to a Medicaid recipient who is enrolled with a managed care organization.

(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 reimbursement policies and requirements for covered dental services provided to a Medicaid recipient who is not enrolled with a managed care organization and optional policies for covered dental services provided to a Medicaid recipient who is enrolled with a managed care organization.

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

(a) How the amendment will change this existing administrative regulation: Amendments include establishing the DMS Dental Fee Schedule as a basis for reimbursement rather than listing the rates

in the body of this administrative regulation; increasing reimbursement rates (again - stated on the new fee schedule) for diagnostic and preventive services by twenty-five (25) percent; and clarifying that a managed care organization is not required to reimburse for dental services provided to Medicaid recipients enrolled with the given managed care organization in accordance with this administrative regulation. Additional amendments include clarifying existing provisions or inserting provisions previously contained in a manual into this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to adopt a user friendly fee schedule as a reference for covered current dental terminology (CDT) codes and rates as opposed to the current lengthy table of services listed in the regulation and to increase reimbursement for preventive and diagnostic procedures in order to enhance provider participation and recipient access to these procedures.. Additional amendments are necessary to clarify provisions or insert provisions previously stated elsewhere.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by adopting a user friendly fee schedule as a reference for covered current dental terminology (CDT) codes; by increasing reimbursement to enhance provider participation and recipient access to preventive and diagnostic procedures; and by clarifying provisions.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by adopting a user friendly fee schedule as a reference for covered current dental terminology (CDT) codes; by increasing reimbursement to enhance provider participation and recipient access to preventive and diagnostic procedures; and by clarifying provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid-participating dental service providers will be affected by the amendments. There are 1,078 individual dentists, 158 group dental practices, sixty-nine (69) individual physicians who perform oral surgery, and nine (9) group physician practices that perform oral surgery enrolled in Kentucky's Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. In order to be reimbursed for dental services providers will need to bill using the correct current dental terminology (CDT) code listed on the fee schedule.

(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 on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Dental providers will be able to be reimbursed for dental services as a result of compliance and will receive increased reimbursement - by twenty-five (25) percent – for preventive and diagnostic procedures.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an additional cost of as much as \$280,000 annually (\$84,000 state funds/\$196,000 federal funds) annually as a result of the amendment.

(b) On a continuing basis: DMS anticipates an additional cost of as much as \$280,000 annually (\$84,000 state funds/\$196,000 federal funds) annually as a result of the amendment.

(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 the amendment to 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. 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.204.

2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires a state Medicaid program 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." 42 C.F.R. 447.204 requires Medicaid programs' reimbursement to be "sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population."

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? The Department for Medicaid Services (DMS) anticipates an additional cost of as much as \$280,000 annually (\$84,000 state funds/\$196,000 federal funds) annually as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates an additional cost of as much as \$280,000 annually (\$84,000 state funds/\$196,000 federal funds) annually as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:270. Hart-Supported Living grant program[services].

RELATES TO: KRS 194A.060, 210.770-210.795, 45 C.F.R. 164.530, 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS 210.780(3), 210.795(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.780(3) authorizes the Hart-[State] Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet[Department for Mental Health and Mental Retardation Services] in concert with the Hart-[State] Supported Living Council to promulgate administrative regulations to establish the methods of awarding Hart-Supported Living[Program] grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions. This administrative regulation establishes[.] the Hart-Supported Living grant program application and award procedures, the standards to monitor the quality of service delivery, and the appellate procedure.

Section 1. Definitions. (1) "Adaptive and therapeutic equipment" means an item recommended by a physician, physician assistant, nurse practitioner, or therapist that is necessary for[which promotes] the recipient's independent functioning and communication.

(2) "Applicant" means a person who may be[is] eligible for a Hart-Supported Living grant[funds] and submits a completed DAIL-HSL-01 Application[application] to the regional Hart-Supported Living grant program coordinator[~~employed by the mental health and mental retardation board located in the region where the applicant chooses to reside~~] by the deadline established in the application.

(3) "Application" means the DAIL-HSL-01 Application which shall[a written request for supported living services which must] be completed and submitted in accordance with Section 3 of this administrative regulation to the department Hart-Supported Living grant program coordinator[regional Hart-supported living coordinator].

(4) "Budget narrative" means a justification and explanation of the amount requested in each budget category.

(5) "Community resource developer" means an employee of a recipient[a person] who coordinates and assists a recipient to:

(a) Participate in the community with persons who are members of the general citizenry; and

(b) Learn and enhance skills and competencies in living in the community[develop friendships, opportunities, and networks in the community on an individualized basis].

(6)[(5)] "Council" means Hart-[State] Supported Living grant program Council as described by KRS 210.775.

(7)[(6)] "Department" means the Department for Aging and Independent Living or DAIL[Mental Health and Mental Retardation Services].

(8)[(7)] "Duplicative service" means[is] a support or service received through the Hart-Supported Living grant program which an individual is eligible[entitled] to receive from another agency or program and is offered or available at the same time.

(9)[(8)] "Eligibility[for services]" means meeting the financial eligibility established in Section 2 of this administrative regulation and the eligibility criteria in KRS 210.790.

(10) "Extraordinary out of pocket expenses" means medical expenses of the recipient or applicant not covered by insurance including:

(a) Co-pays;

(b) Deductibles;

(c) Prescriptions;

(d) Premiums for medical insurance;

(e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures; or

(f) Other services or supports related to the individual's disability.

(11) "Family" means the recipient's parent, step parent, adoptive parent, foster parent, grandparent, siblings, spouse, or legal guardian.

(12) "Family responsibility" means activities or provisions that a family performs naturally:

(a) Until the recipient reaches eighteen (18) years of age including:

1. Educational activities;

2. Housing;

3. Food;

4. Clothing;

5. Child care; and

6. Medical care.

(b) Until a recipient reaches twelve (12) years of age personal care services shall not be paid or reimbursed by the Hart-Supported Living grant program.

(13)[(9)] "Hart-Supported Living grant" means an award of funds for a fiscal year to a recipient and is defined by KRS 210.770(5) and (6)[an applicant].

(14) "Hart-Supported Living plan" means the DAIL-HSL-02 Plan document developed with the recipient to account for the services to be provided and the costs.

(15) "Hart-Supported Living plan amendment" means the DAIL-HSL-03 Plan Amendment document that is a written request for change in a Hart-supported living plan in the same fiscal year.

(16)[(40)] "Hart-Supported Living grant program" or "HSL" is defined by KRS 210.770(5) and (6).

(17) "Hart-Supported Living services" means services that are:

(a) Provided to an individual with a disability; and

(b) Directed to the recipient toward integrated community living and include:

1. A community resource developer;

a. As authorized in KRS 210.770(8)(a);

b. Who coordinates and assists a recipient to meet requirements pursuant to KRS 210.770(5)(a)-(e); and

c. Who ensures compliance with KRS 210.770(6);

2. Homemaker services;

a. As authorized in KRS 210.770(8)(b); and

b. That include:

(i) Cooking;

(ii) Cleaning;

(iii) Shopping;

(iv) Laundry; or

(v) Housekeeping;

3. Personal care services;

a. As authorized by KRS 205.900(3); and

b. Pursuant to KRS 210.770(8)(c);

4. In-home training and home management assistance:

a. As authorized in KRS 210.770(d); and

b. That include services to individuals over the age of twelve

(12) to assist with one-on-one instruction in the home, including:

(i) Property maintenance;

(ii) Financial planning;

(iii) Housekeeping such as laundering, meal preparation, vacuuming, storing purchased items, washing dishes, changing bed linens; and

(iv) Shopping;

5. Start-up grants:

a. Authorized by KRS 210.770(8)(e);

b. That include a grant to allow recipient onetime expenses for supporting independent living limited to:

(i) A security deposit;

(ii) Utility deposits; or

(iii) Purchases of furniture, appliances, and equipment up to \$2,000;

6. Transportation:

a. Authorized by KRS 210.770(8)(f); and

b. For mileage reimbursement that may be requested for a person or provider who transports the recipient to work or community activities that are not customarily a family responsibility, not to exceed the state reimbursement rate;

7. Home modifications that:

a. Are authorized by KRS 210.770(8)(g);

b. Include:

(i) An architectural change;

(ii) A ramp;

(iii) A widening of doors; or

(iv) Other adaptation that may be requested for the recipient's primary residence to directly accommodate the recipient's disability; and

c. Do not to exceed the \$45,000 per recipient lifetime limit;

8. Adaptive and therapeutic equipment:

a. Authorized by KRS 210.770(8)(h); and

b. That includes an item which promotes the recipient's independent functioning and is recommended by a:

(i) Physician;

(ii) Physician assistant;

(iii) Nurse practitioner; or

(iv) Therapist; and

9. Individualized life planning authorized by KRS 210.770(8)(i).

(18) "Person with a disability" is defined by KRS 210.770(2).

(19) "Primary residence" means a dwelling where the recipient permanently resides and is owned or leased by the recipient or recipient's family as documented on the deed or lease agreement.

(20)[(41)] "Home modifications" means an architectural change, ramp, widening of doors, or other adaptation which need to be made to the recipient's place of residence to accommodate that person's disability.

(12) "Homemaker services" means cooking, cleaning, shopping, laundry, housekeeping, and practical assistance in maintaining the recipient's household.

(13) "Impairment" means "mental impairment" as defined by stated at KRS 210.770(1) and "physical impairment" as defined by KRS 210.770(3).

(14) "One-time support" means a nonrenewable grant for start-up costs, home modifications, assistive technology, or other support awarded for no longer than one fiscal year.

(15) "Ongoing supports" means a renewable grant for supports or services which will likely be required on a continuing basis.

(16) "Personal care services" means assistance with feeding, bathing, dressing, transferring, turning, repositioning, activities of daily living, and if necessary, ambulation and emergency procedures.

(17)] "Recipient" means a person who has applied and been approved for a Hart-Supported Living grant.

(21) "Recoupment" means a return of funds for any payment that was made in an incorrect amount including overpayments and underpayments under statutory, contractual, administrative, or other legally applicable requirements.

(22)[(48)] "Regional Hart-Supported Living grant program coordinator" means a person or entity designated by the DAIL who is responsible for fiscal and programmatic oversight of Hart-Supported Living grants [funds] and plans.

(23)[(49)] "Request for informal dispute resolution [reconsideration]" means the process to be followed if a recipient

disagrees with a decision made [by the regional supported living coordinator, review team, or council].

(24) [(20)] "Review team" means a team designated by the department ~~to perform the functions established~~ [and Council to review applications, make funding recommendations, and review requests for amendments from recipients as described] in Section 5[6] of this administrative regulation.

[(21)] "Start-up grants" means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture, home furnishings, or equipment.

(22) "Substantial limitation of a major life activity" means as stated at KRS 210.770(4).

(23) "Supported living plan" means the document developed between the regional Hart-supported living coordinator and the recipient to account for the services to be provided and funds awarded as a Hart-supported living grant.

(24) "Supported living plan amendment" means a written, documented change in a supported living plan in the same fiscal year.

(25) "Transportation" means a service or mileage reimbursement for a person or provider who transports the recipient to work or community activities.]

Section 2. Eligibility [State Supported Living Council Operating Procedures]. (1) Eligibility shall be determined in accordance with KRS 210.790(1).

(2) Upon the effective date of this administrative regulation, an applicant who is eligible for services through Medicaid or a Medicaid Waiver shall not be eligible for on-going services through a Hart-Supported Living grant unless the applicant is:

(a) Considered inappropriate for participant directed services due to:

1. An inability to manage his own services; and
2. A lack of availability of a person to act as his representative;

or

(b) Unable to access the Medicaid program through a traditional provider.

(3) Medicaid eligible individuals requesting services that are not available or exceed program limits through Medicaid may apply for a Hart-Supported Living grant for those services not covered through Medicaid.

(4) Applicants shall submit a copy of the following for each member of the applicant's household:

(a) The most recent year's income tax returns disclosing the adjusted gross income;

(b) The past three (3) months pay stubs; or

(c) Other verification of income for the past year.

(5) An individual receiving Social Security Insurance shall be considered a household of one (1).

(6) Applicants with an annual household adjusted gross income at or below 300 percent of the federal poverty guidelines shall be considered an eligible applicant.

(7) Applicants with a household adjusted gross income above 300 percent of the federal poverty guidelines shall not be considered an eligible applicant unless the deduction of allowable extraordinary out of pocket expenses adjusts the household income to 300 percent of the federal poverty guidelines or lower.

(8) Recipients of a Hart-Supported Living grant prior to the effective date of this administrative regulation shall meet the requirements of this section by July 1, 2018.

(9) An individual shall be limited to one (1) startup grant [A State Supported Living Council member shall:

(a) Adhere to applicable laws and regulations concerning confidentiality;

(b) Disclose any relationship to any person receiving Hart-supported living services, including themselves; and

(c) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the chair of the State Supported Living Council shall recommend the dismissal of that member to the governor.

(2) A State Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial;

(b) Be physically present in a meeting or portion of a meeting in which the matter with respect to which a conflict of interest exists is discussed or voted on;

(c) Assist another individual, regardless of where the person resides, to complete an application for supported living services, except as provided in subsection (3) of this section.

(3) A State Supported Living Council member may assist in the completion of an application for Hart-supported living services for himself, if eligible, or an eligible family member].

Section 3. Applicant Responsibilities. (1) To be considered for a Hart-Supported Living grant, the applicant shall submit a completed DAIL-HSL-01 Application [application] to the regional Hart-Supported Living grant program coordinator where the applicant resides [chooses to reside. The application shall be submitted:

(a) On the current Hart-supported living application with all required sections completed; and

(b) by the annual deadline of:

(a) February 1 for all recipients submitting a DAIL-HSL-04 Request For Renewal of an on-going plan; or

(b) [.] April 1 for new applications or requests.

(2) The DAIL-HSL-01 Application shall be submitted:

(a) With all sections and attachments completed; and

(b) Via:

1. The US postal service;

2. Hand delivered to the HSL staff office; or

3. Electronically through email or website submission.

(3) An applicant shall disclose any relationship with:

(a) A person employed by the contract agency;

(b) The regional Hart Supported-Living coordinator;

(c) A council member; or

(d) A department staff member.

(4) A Hart-Supported Living grant program application shall not be used or approved to pay for the following [funded for]:

(a) Rent [On-going rent] or mortgage payments;

(b) Payment of a recipient's or employee's [medical] insurance premium regardless of insurance type or [unpaid] medical bills [bill];

(c) Supplementation of wages for staff in other publicly-funded programs;

(d) Modifications costing over \$2,500 [\$3,500] to rental property;

(e) Modifications of rental property without written permission from the property owner;

(f) A home improvement not related to a person's disability;

(g) [(f)] Rental of a vehicle for more than thirty (30) days in a fiscal year;

(h) [(g)] Purchase of a vehicle;

(i) [(h)] Supports or services for individuals in accordance with KRS 210.770(6)(a)-(e);

(j) [living arrangements that include more than three (3) people who are eligible for Hart-supported living unless all are related legally or biologically as a family unit;

(k) [Equipment or service that [which] is duplicative or obtainable from another program or funding source for which the applicant qualifies;

(l) [(j)] Tuition and associated costs to any educational institution;

(m) [.] Transportation, costs, or fees for a program or activity in which the [lasting more than thirty (30) days if during that fiscal year a] majority of participants are individuals with disabilities as defined by the Americans with Disabilities Act (ADA) [of 1990];

(n) Furniture not related to a start-up grant;

(o) Household items;

(p) Utility bills including:

1. Mobile phones;

2. Land line phones;

3. Internet access;

4. Cable;

5. Satellite dish;

6. Gas;

7. Electric;
8. Water;
9. Sewer; or
10. Other home related costs that may be considered utility and ongoing;
(p) Vacations;
(q) Camps that are segregated;
(r) Payment of medical treatments including:
1. Medical costs;
2. Prescriptions;
3. Vitamins and supplements;
4. Nutritional supplements; or
5. Medical supplies;
(s) Groceries, meals, or dining out;
(t) Fees and expenses for anyone other than the recipient and one (1) attendant; or
(u) Studies or research projects.
(5) Community activity fees shall:
(a) Be limited to pay for the recipient and one (1) attendant to accompany the recipient to an activity that promotes participation in the community with members of the general citizenry;
(b) Not be provided for activities that are a family responsibility; and
(c) Not exceed \$750 per grant year per recipient.
(6) Community activity fees, membership fees, and services funded through a Hart-Supported Living grant shall be provided and purchased in Kentucky unless they are not available in Kentucky.

[(k) Support or service which is duplicative of a support or service which is obtainable from another program for which the individual qualifies; or
(l) Furniture or home furnishings not related to a start-up grant; or a person's disability.]

Section 4.~~[Eligibility. An applicant must meet the eligibility requirements set forth in KRS 240.790]~~

Section 5.~~[Application Evaluation and Funding Criteria. (1) The following criteria shall be used by the review team to recommend funding for a Hart-Supported Living grant: the DAIL-HSL-01 Application which shall:~~

~~(a) Be received on or before the due date;~~
~~(b) Be filled out in its entirety;~~
~~(c) Clearly identify the applicant's need for services requested;~~
~~(d) Clearly identify and justify the cost for requested services;~~
~~(e) Clearly identify how the services will be provided;~~
~~(f) Clearly identify who will provide the services;~~
~~(g) Include a budget sheet and budget narrative for the funding requested for each service and provider;~~
~~(h) Identify personal resources that will be utilized to provide identified services; and~~
~~(i) Adhere to the core principles and definitions of the Hart-Supported Living grant program in accordance with KRS 210.770(5) and (6) and 210.795.~~
~~(2) Funding for the application shall be dependent upon:~~
~~(a) Meeting the eligibility criteria established in Section 2 of this administrative regulation;~~
~~(b) Completeness;~~
~~(c) Submission on or before the deadline;~~
~~(d) Evaluation by the review team; and~~
~~(e) Availability of funding.~~
~~(3) Once the allocation of funds have been obligated to applications based on the review criteria, other applications shall not be approved for funding unless additional funding becomes available[(1) Adherence to principles of the Hart-supported Living Program as shown by the following factors:~~
~~(a) The ability of the applicant to exercise choice and autonomy in the supported living arrangement;~~
~~(b) The involvement of people, in addition to the applicant and paid staff, who are committed to supporting the arrangement; and~~
~~(c) Opportunities for the applicant to be present and participate in family and community activities.~~

~~(2) Potential for success as shown by the following factors:~~
~~(a) The applicant has clearly indicated the reason for requesting funds and what he will do if granted the funds;~~
~~(b) The applicant has identified a place to live; and~~
~~(c) Additional resources available to the applicant have been identified that may include:~~
~~1. Family;~~
~~2. Friend; or~~
~~3. Another service provider who can support the situation~~
~~(d) The application indicates that the applicant is planning for his future.~~
~~(3) Need as shown by the following factors:~~
~~(a) Services have been designed around the specific needs of the applicant;~~
~~(b) The applicant or his family is experiencing a crisis situation; and~~
~~(c) The applicant's multiple disabilities create barriers to developing and sustaining supports.~~
~~(4) Accountability as shown by the following factors:~~
~~(a) The applicant has identified a prospective service provider;~~
~~(b) The capability of the applicant, and the people supporting the applicant, to manage the resources and arrange for the requested services; and~~
~~(c) The applicant has demonstrated a reasonable effort to secure funds from other sources, if appropriate.~~
~~(5) Overall purpose of the application as shown by whether the supported living resources will be used to promote and improve a positive quality of life for the applicant].~~

Section 5.~~[6.]~~ Review Teams. (1) A review team shall:
~~(a) Evaluate applications in accordance with the criteria in Section 4[5] of this administrative regulation;~~
~~(b) Make[funding] recommendations for applications to be funded based on the review team recommendation;[for each fiscal year, not to exceed regional allocations; and]~~
~~(c) Review requests for plan amendments utilizing the DAIL-HSL-02 Plan Amendment;~~
~~(d) Not authorize a plan amendment to increase the grant award; and~~
~~(e) Reallocate grant awards that are underspent to fund individuals in the following priority order:~~
~~1. Applicants approved through the informal dispute or appeals process for the current fiscal year or, if no funding is available, these individuals shall be the first funded in the next fiscal year; and~~
~~2. Applicants in the current fiscal year based on priority order according to subsection (1)(a-d) and (2)(a-b) of this section that funding was not available prior to the reallocation of grant awards.~~
 (2) Funding recommendations shall be made in the following order:
~~(a) Current recipients requesting the same amount or less for on-going supports;~~
~~(b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:~~
~~1. An increase in the pay rate of a provider for services currently in the plan;~~
~~2. An increase in employer taxes for services currently in the plan;~~
~~3. An increase in worker's compensation rates; or~~
~~4. Payment to a provider to compute required employer taxes and withholdings;[-]~~
~~(c) Applicants denied funding from the previous fiscal year and approved for funding by the informal dispute resolution[reconsideration] or administrative hearing process as outlined in Section 14[Sections 11 and 12] of this administrative regulation; and~~
~~(d) New applicants and current recipients requesting additions to their plans.~~
~~(3) Multiple[A] review teams may be established based upon the number of applications received annually and[team] shall be designated by the department and[council and shall be] made up of a minimum of three (3) individuals consisting of[and a maximum of six (6) individuals as follows]:~~

- (a) ~~[A minimum of] One (1) employee[and maximum of two (2) employees] of the department;[and]~~
- (b) ~~One (1) council member; and~~
- (c) ~~One (1) representative of a community or advocacy organization that serves those with disabilities.~~
- (4) ~~If needed and available, technical assistance may be provided for educational purposes to the review team by a subject matter expert[A minimum of two (2) and maximum of four (4) regional supported living coordinators.~~
- (4) ~~A review team shall not include:~~
 - (a) ~~The regional coordinator representing an applicant; or~~
 - (b) ~~An employee of a supported living contracted agency for the applicant's choice of residence].~~

Section 6.~~[7.]~~ Recipient Responsibilities. (1) A recipient of a Hart-Supported Living grant shall:

- (a) Meet the eligibility requirements established in Section 2 of this administrative regulation;
- (b) Participate in the development of a DAIL-HSL-02 Plan[supported living plan] with the regional Hart-Supported Living grant program coordinator;
- (c)~~(b)~~ Adhere to the Hart-Supported Living plan and request a plan amendment for a necessary[desired] change;[and]
- (d)~~(c)~~ Negotiate the grant funded services to be provided by:
 - 1. A service providing agency; or
 - 2. An individual who provides services, as an employee or independent contractor; and
- (e) Be responsible for the recoupment of funds when used for any purpose other than the approved plan or approved amended plan.
- (2) A recipient of a Hart-Supported Living grant who is an employer shall:
 - (a) Be responsible for the computation, payment, and reporting of employee payroll, withholdings, workers' compensation, unemployment, and taxes;
 - (b) Establish terms of employment for an employee[.]; to:
 - 1. Include time, duties, and responsibilities; and
 - 2. Be[- This shall be] in the form of a signed agreement; and
 - (c) Establish terms for an independent contractor[contract] to include:
 - 1. Proof of licensure or certification and insurance;
 - 2. Services to be provided and compensation; and
 - 3. A[- This shall be in the form of a] signed agreement.
- (3) A recipient[of a Hart-supported living grant] shall not sell or donate equipment or another item purchased with Hart-Supported Living grant funds without the written consent of the council.
- (4) A recipient of a Hart-Supported Living grant shall comply with standards as set forth in KRS 210.795.
- (5) A recipient shall immediately notify the regional Hart-Supported Living coordinator upon the receipt of additional supports or services.
- (6) A recipient shall submit:
 - (a) Documentation with a request for payment[be responsible for submitting documentation] that shows a support or service approved on a DAIL-HSL-02 Plan has been provided[when requesting payment]; and
 - (b) A timesheet that shall be signed by an employee and employer.
- (7) A recipient of grant funds[an ongoing grant] shall submit an application to[a] request an increase of services or[for continued or increased] funding by April 1 to be considered with all applicants for a Hart-Supported Living grant[for funding] for the fiscal year beginning July 1.
- (8) Recipients of grant funding prior to the effective date of this administrative regulation shall:
 - (a) Receive priority for funding of existing services listed on the individuals Hart-Supported Living plan, if the application is complete and submitted in compliance with Section 3 of this administrative regulation; and
 - (b) Not receive priority funding for:
 - 1. New services;
 - 2. Expanded services; or
 - 3. Requesting additional funding for existing services.

Section 7. Recipient's Employee Responsibilities.

- (1) An employee shall:
 - (a) Be selected by the recipient;
 - (b) Be eighteen (18) years of age or older;
 - (c) Enter into and comply with the written agreement for terms of work required by the recipient's DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment;
 - (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 recipient, recipient's representative, or family;
 - (f) Be able to understand and carry out instructions;
 - (g) Keep records as required by the recipient;
 - (h) Report to work as scheduled;
 - (i) Maintain the privacy and confidentiality of the recipient;
 - (j) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 and on the needs of the recipient;
 - (k) Maintain and submit timesheets documenting hours worked and services provided;
 - (l) Provide proof of the following background checks, completed no more than sixty (60) days prior to hire and submitted prior to the first day of employment:
 - 1. A criminal background check from the Administrative Office of the Courts or Justice and Public Safety Cabinet and not have plead guilty to or been convicted of:
 - a. Committing a sex crime or violent crime as defined in KRS 17.165(1)-(3); and
 - b. A felony offense related to theft, abuse of a person, or drugs;
 - 2. A check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;
 - 3. A check of the central registry for a background check and not be found on the registry; and
 - 4. A check of the Adult Protective Services Caregiver Misconduct Registry and not be found on the registry; and
 - (m) Notify the regional Hart Supported-Living coordinator of conditions which seriously threaten the health or safety of the recipient or employee.
- (2) An individual shall not be hired as an employee if the individual:
 - (a) Has not submitted proof of the background checks specified in subsection (1)(l)1.-4. of this section;
 - (b) Is on the Central Registry, Nurse Aid Abuse Registry, or Adult Protective Services Caregiver Misconduct Registry;
 - (c) Has pled guilty to or been convicted of committing a crime as specified in subsection (1)(l)1.a. or b. of this section; or
 - (d) Is not able to understand or carry out a recipient's instructions or services as listed on the DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment.
- (3) An employee shall not work more than forty (40) hours in a calendar week (Sunday through Saturday).

Section 8. Operating Agency Responsibilities. The operating agency for Hart-Supported Living grant program funds shall:

- (1) Implement the Hart-Supported Living grant program in accordance with KRS 210.770, 210.790, and 210.795;
- (2) Assume fiscal accountability for the state funds designated for the program;
- (3) Provide necessary personnel within the operating agency office that shall:
 - (a) Meet qualifications for the position held that include at a minimum:
 - 1. A bachelor's degree in human services or a related field;
 - 2. One (1) year of experience working in a social service field; and
 - 3. Completion of six (6) hours of annual training related to the position or population, approved by the department;
- (b) Not have a conflict of interest; and
- (c) Disclose any relationship with any applicant or recipient of a Hart-Supported Living grant to the department;
- (4) Establish a cost center and record staff costs for administering the Hart-Supported Living grant Program;
- (5) Maintain files and records for ten (10) years after the last

date funding is no longer received as required by the DAIL records retention schedule that include:

- (a) Applications funded;
 - (b) Applications that were not funded;
 - (c) Names of recipients whose funding was terminated;
 - (d) Names of currently-funded recipients;
 - (e) Recipient plans;
 - (f) Amendments to plans;
 - (g) Financial records; and
 - (h) Recipient monitoring reports.
- (6) Issue payment of recoupment to DAIL if:

(a) The operating agency's documentation is not sufficient to determine that HSL funds were used according to this administrative regulation; or

(b) The recipient used his or her plan inappropriately; and

(7) Not request the recouped funds back from the recipient unless:

(a) The agency demonstrates to the department by compelling evidence that the recipient used his or her plan inappropriately; and

(b) The department provides written approval to recoup the funds from the recipient.

Section 9. Council Responsibilities. (1) A council member shall:

(a) Adhere to the:

1. Cabinet's confidentiality of records and reports requirements in accordance with KRS 194A.060; and

2. Confidentiality requirements for an applicant's or recipient's health information pursuant to 45 C.F.R. 164.502 - 164.514;

(b) Disclose any relationship with any person receiving a Hart-Supported Living grant, including themselves; and

(c) Adhere to the bylaws, statutes, and regulation.

(2) If a council member fails to act in accordance with this section, the chair or any council member may:

(a) Call for a vote of the council to recommend the dismissal of the council member; and

(b) Upon a majority vote for dismissal, recommend to the governor that the member be dismissed.

(3) A council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial;

(b) Be physically present in a meeting or portion of a meeting during which the subject matter of the conflict of interest is discussed or voted on; or

(c) Assist another individual, regardless of where the person resides, to complete an application for Hart-Supported Living grant funds or services except as provided in subsection (5) of this section.

(4) A council member may assist in the completion of an application for himself, if eligible, or an eligible family member.

(5) A council member shall be responsible to assist in the review of applications in accordance with Section 5 of this administrative regulation[Section 8. Reduction of a Hart-supported Living Grant. (1) The grant shall be reduced by any amount received for a service which duplicates a support or service on the supported living plan.

(2) The grant shall be reduced if:

(a) The support does not comply with the principles and definition of the Hart-supported living program in KRS 210.770(5) and (6) and 210.795; or

(b) The recipient no longer needs a support or service in whole or in part.

Section 9. Termination of a Hart-supported Living Grant. A Hart-supported living grant shall be terminated if the recipient:

(1) Does not use the funds in accordance with the principles and definition of supported living in KRS 210.770, 210.795, and this administrative regulation;

(2) Does not comply with employer responsibilities if applicable;

(3) Takes up residence outside of Kentucky;

(4) Requests termination of the Hart-supported living grant; or

(5) Dies.

Section 10. Nonfunded Supported Living Applications. (1) Applications that will exceed the regional allocation of supported living funds shall not be approved unless funding for that application becomes available within the fiscal year for which the application was made.

(2) The council may recommend funding for an application when it is determined through the reconsideration process that the review team did not comply with Sections 5 and 6 of this administrative regulation.

Section 11. Reconsideration Process. (1) A recipient or applicant who disagrees with a decision by the regional Hart-supported living coordinator or review team may request reconsideration, in writing, or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the decision. Reconsideration may be requested regarding:

(a) A supported living plan;

(b) A plan amendment;

(c) The reduction of a grant;

(d) The termination of a grant; or

(e) A nonfunded application.

(2) A request for reconsideration shall:

(a) Be submitted to the regional Hart-supported living coordinator for review by the council; and

(b) Contain the following information:

1. Name;

2. Address;

3. Telephone number;

4. A decision to be reconsidered;

5. A reason for a decision to be reconsidered;

6. Documentation supporting request for reconsideration; and

7. Signature of person requesting reconsideration.

(3) A meeting for reconsideration shall be scheduled and include:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or his designee;

(b) The recipient or his designee;

(c) One (1) member of the review team; and

(d) The regional Hart-supported living coordinator.

(4) The meeting for reconsideration shall be conducted at a time and place convenient to the parties and may be conducted in person, by videoconference, or by telephone conference.

(5) The council shall make the final decision and issue a written response to the recipient with an explanation for the decision within thirty (30) days.

(6) If a recipient or applicant disagrees with the determination made by the council, the recipient may request an administrative hearing.

(7) No currently funded recipient shall have his grant reduced or terminated to fund a plan or grant approved through the reconsideration process.

Section 12. Request for Administrative Hearing. (1) An applicant or recipient who disagrees with the reconsideration decision may request an administrative hearing within thirty (30) days of receipt of notification.

(2) The applicant or recipient requesting an administrative hearing shall:

(a) Submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621; and

(b) Include with the request the same information required in Section 11(2)(b) of this administrative regulation.

(3) The administrative hearing process shall be in accordance with KRS Chapter 13B.

Section 13. Regional Hart-supported Living Coordinator Responsibilities. The regional Hart-supported living coordinator

shall:

- (1) Participate as required in review team responsibilities as outlined in Section 6(1) of this administrative regulation;
- (2) Disseminate applications for the Hart-supported Living Program which include the evaluation criteria;
- (3) Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant's behalf;
- (4) Receive supported living applications, document date received, send notice of receipt of application;
- (5) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);
- (6) Maintain a database of expenditures and activities of unfunded applicants and funded recipients for each fiscal year. Criteria for the database information shall be established by the council and the department;
- (7) Notify all applicants of the status of their applications within fifteen (15) days of the completion of the initial funding recommendations, but no later than June 15 of each fiscal year;
- (8) Upon recommendation for funding, meet with the recipient to finalize a supported living plan within thirty (30) days of the recommendation. Initial plans shall follow the funding recommendations and be specific to approved supports and services;
- (9) Educate the recipient on their responsibilities as outlined in Section 7 of this administrative regulation;
- (10) Arrange for payments for currently funded supported living plans that includes:
 - (a) Receiving bills or other documentation that a service has been provided;
 - (b) Verifying the service as a part of the established plan;
 - (c) Approving payment; and
 - (d) Keeping a record of payment.
- (11) Arrange for billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient;
- (12) Monitor to ensure compliance with regulations and the successful implementation of plans:
 - (a) Monitoring shall be by home visit or site visit where the services are received with home modifications requiring a home visit.
 - (b) Monitoring reports shall be completed for each recipient as follows:
 1. Within three (3) months of completion of the service for one (1) time services received by a recipient; and
 2. within the first three (3) months of the initiation of the supported living plan and annually thereafter for on-going services received by a recipient.
 - (c) Reports of monitoring visits shall be documented in a manner and format approved by the council.
 - (d) Monitoring reports shall be a permanent part of the recipient's record.
- (13) Attend trainings and meetings as required by the council; and
- (14) Submit database information as outlined in this section to the Division of Mental Retardation Services.

Section 14. Contract Agency Responsibilities. The contract agency for Hart-Supported Living funds shall:

- (1) Implement the Hart-Supported Living program in accordance with KRS 210.770, 210.790, and 210.795.
- (2) Assume fiscal accountability for the state funds designated for the program.
- (3) Provide necessary personnel within the contract agency office;
- (4) Establish a cost center and record staff costs for administering the Hart-Supported Living Program.
- (5) Maintain files and records that include:
 - (a) Applications;
 - (b) Requests for continued funding;
 - (c) Applications that were not funded retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years after the fiscal

year in which application was not funded;

- (d) Records regarding recipients whose funding was terminated retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years or for seven (7) years past majority;
- (e) Currently funded recipients;
- (f) Recipient plans;
- (g) Amendments to plans;
- (h) Financial records; and
- (1) Recipient monitoring reports.

Section 10.[15-] Department Responsibilities. The Department shall:

- (1) In cooperation with the council, establish deadlines, budgets, and priorities for Hart-Supported Living grant program funds;
- (2) Maintain aggregate financial and programmatic data;
- (3)[Advocate for program expansion;
- (4)] Provide staff support, technical assistance, and training for the Hart-Supported Living grant Program;[and]
- (4)[(5)] Provide monitoring of the Hart-Supported Living grant Program;
- (5) Issue recoupment notices to the provider agency if Hart-Supported Living grant program funds were not used in accordance with this administrative regulation; and
- (6) Not allow the provider agency to request the recouped funds back from the recipient unless the agency can demonstrate by compelling evidence that the recipient purposely used plan funding inappropriately.

Section 11. Regional Hart-Supported Living Grant Program Coordinator Responsibilities. The regional Hart-Supported Living grant program coordinator shall:

- (1) Disseminate applications for the Hart-Supported Living grant program that include the evaluation criteria;
- (2) Provide assistance in the completion of the DAIL-HSL-01 Application upon request by an eligible applicant or individual on the applicant's behalf;
- (3) Receive the DAIL-HSL-01 Application, document the date received, and send notice of receipt of application to the applicant;
- (4) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);
- (5) Maintain a database by fiscal year of applicants and recipients that shall include the individual's:
 - (a) Name;
 - (b) Address;
 - (c) Phone Number;
 - (d) Birth date;
 - (e) County of residence;
 - (f) Services or supports requested;
 - (g) Cost of each service or support;
 - (h) Contact person phone number; and
 - (i) Amount of allocated funding;
- (6) Notify all applicants of the status of their applications:
 - (a) By June 15 for the fiscal year beginning July 1; or
 - (b) Within fifteen (15) days of the state budget allocation being received;
- (7) Within thirty (30) days of the recommendation for funding of an applicant, conduct a face-to-face visit to finalize the Hart-Supported Living grant program plan and budget;
- (8) Conduct a home visit to verify the need for home modifications;
- (9) Educate a recipient on the recipient's responsibilities as outlined in Section 6 of this administrative regulation;
- (10) Approve payments for funded Hart-Supported Living plans by:
 - (a) Receiving bills or other documentation that a service has been provided;
 - (b) Verifying the service as a part of the established plan; and
 - (c) Keeping a record of each payment;
- (11) Arrange for the billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient;

(12) Ensure compliance with this administrative regulation and the successful implementation of the Hart-Supported Living plans through monitoring which shall include:

(a) Conducting a home visit or site visit at the location where the services are received;

(b) Visiting the home when home modifications are requested and completed;

(c) Completing a monitoring report that shall be completed for each recipient as follows:

1. Within three (3) months of completion of the service for one (1) time services received by a recipient; and

2. Within the first three (3) months of the initiation of the Hart-Supported Living plan and for services received by a recipient; and

(d) Maintaining monitoring reports as a permanent part of the recipient's record;

(13) Attend trainings and meetings as required by the council;

(14) Submit database information as outlined in this section to the department; and

(15) Disclose any relationship with an applicant or recipient of a Hart-Supported Living grant including:

(a) Family member;

(b) Friend;

(c) Co-worker;

(d) Co-worker family member; or

(e) Co-worker friend.

Section 12. Reduction of a Hart-Supported Living Grant. (1)

The regional Hart-Supported Living grant program coordinator shall recommend a reduction in Hart-Supported Living grant funding by the amount that duplicates a support or service on the Hart-Supported Living plan to the Hart-Supported Living council.

(2) The Hart-Supported Living grant shall be reduced if:

(a) The support does not comply with the principles and definition of the Hart-Supported Living grant program in KRS 210.770 through 210.795;

(b) The recipient no longer needs a support or service in whole or in part; or

(c) The recipient does not utilize funds in accordance with the approved DAIL-HSL-02 Plan.

Section 13. Termination of a Hart-Supported Living Plan. (1)

The regional Hart-Supported Living grant program coordinator shall recommend termination of the program to the council if the recipient:

(a) Does not use the funds in accordance with the principles and definition of Hart-Supported Living found in KRS 210.770, 210.795, and this administrative regulation;

(b) Does not comply with employer responsibilities, if applicable;

(c) Takes up residence outside of Kentucky;

(d) Requests termination of the Hart-Supported Living grant;

(e) Does not utilize funds in accordance with the approved DAIL-HSL-02 Plan;

(f) Does not notify the Hart-Supported Living grant program coordinator upon receipt of additional supports or services as required in Section 6(5) of this administrative regulation; or

(g) Passes away.

(2) The regional Hart-Supported Living grant program coordinator shall recommend termination of the program if a council member or program staff is threatened or intimidated by a recipient's:

(a) Caregiver;

(b) Family member; or

(c) Employee.

(3) A termination shall be appealable in accordance with Section 14 of this administrative regulation.

Section 14. Request for Informal Dispute Resolution or Administrative Hearing. (1) A recipient may request an informal dispute resolution.

(2) A dispute resolution shall be limited to:

(a) The denial, reduction, or termination of a:

1. Hart-Supported Living plan; or

2. Hart-Supported Living plan amendment;

(b) The reduction of Hart-Supported Living grant program funding as requested in the plan; or

(c) The reduction or termination of Hart-Supported Living grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's HSL program coordinator within thirty (30) days following the notification by the Hart-Supported Living grant program coordinator of a decision in subsection (2) of this section; and

(b) Contain the following information:

1. Name, address, and telephone number of the recipient;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;

(b) One (1) member of the review team; and

(c) The Hart-Supported Living grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review.

(8) The appeal shall be submitted:

(a) Within fifteen (15) business days from the date on the letter providing the decision of the dispute resolution team;

(b) In writing; and

(c) To the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(9) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.

Section 15.[46:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-HSL-01 Application", April 2015;["Hart-Supported Living Grant Application", July 2006 edition; and]

(b) "DAIL-HSL-02 Plan", April 2015;

(c) "DAIL-HSL-03 Plan Amendment", April 2015; and

(d) "DAIL-HSL-04 Request for Renewal", April 2015[July 2006 edition].

(2) This material may be inspected, copied, or obtained,[.] subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street[Mental Health and Mental Retardation Services, Division of Mental Retardation Services, 400 Fair Oaks Lane], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, July 14, 2015, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until

July 31, 2015. Send written notification of intent to be heard at the public hearing or written comments to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Hart-Supported Living grant program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements of the Hart-Supported Living grant program including eligibility, application, and application review, responsibilities of the recipient, recipient's employees, council, department and regional coordinators and the reduction or termination of a Hart-Supported Living plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the Hart-Supported Living grant program council, eligibility for services and living arrangements as specified in KRS 210.770-795.

(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 Hart-Supported Living grant program.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides clarification of the application process, applicant's responsibilities and the application evaluation criteria. Establishes review teams for evaluating the applications for funding the Hart-Supported Living plan, establishes the responsibilities of a recipient, a recipient's employee(s), the council, department and regional coordinator. The amendment clarifies eligibility including financial eligibility and sets limits for funding home modifications within a twelve (12) month period and a lifetime maximum. This amendment also eliminates duplication of services, and requires the Hart-Supported Living grant program to be the funding of last resort.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to become better stewards of the funding provided for the Hart-Supported Living grant program and to open the program up for individuals that have been unable to obtain funding to meet their needs due to limited funding available within the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statute KRS 210.770 - 795 by establishing the Hart-Supported Living grant program council responsibilities in compliance with 210.775 and 210.780 and adhering to the core principles established in 210.795 to allow individuals to remain in the community, in their own home with services to assist them in being as independent as possible in the community.

(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, responsibilities of all individuals involved, reduction and termination of a Hart-Supported Living plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 350 individuals receiving funding through the Hart -Supported Living grant program and approximately 320 individuals whose applications go unfunded every year. The fourteen (14) Community Mental Health Centers provide coordination of the program and provide assistance and oversight to the recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 1. The current participants will have until 2018 to comply with the eligibility requirements of this amendment. They will now have a cap on the funding that can be received within a year and a lifetime maximum. 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 Hart- Supported Living grant program.. This will ensure that State General Fund dollars are being provided as the last resort to assist individuals in meeting their needs. 2. Applicants that have gone unfunded year after year due to a lack of available funding will begin to receive funding based on the yearly funding cap and lifetime maximum of recipients and the eligibility requirements as they take effect. 3. The CMHC's will have to evaluate their hiring criteria to ensure newly hired staff for the Hart -Supported Living grant program meet the qualifications to provide the services. Those that are currently employed that do not meet the requirements may remain employed.

(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. The program does not cost the recipients to participate.

(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 due to: Funding caps and lifetime limits; and those eligible for the same or a 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: Approximately \$6.8 million; there is no increase in funding for Hart-Supported Living grant program.

(b) On a continuing basis: Approximately \$6.8 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 or funding will be necessary due to this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established or fees increased as a result of this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are 14 Community Mental Health Centers 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.060, 210.770- 210.795.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will not generate additional revenue or an increase in costs in expenditures.

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? For the first year, approximately \$6.8 million.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, approximately \$6.8 million.

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 1:310. Standards for child-placing agencies.

RELATES TO: KRS 2.015, 17.165, 17.500(8), 158.135(1)(c), ~~189.125~~, 194A.060, 199.011, 199.430(3), 199.470, 199.492, 199.493, 199.510, 199.520, 199.570, 199.572, 199.590, 199.640, 199.645, 199.650-199.670, ~~258.015~~, ~~258.035~~~~246-300~~, 273.161(8)~~[(7)]~~, 311.720(9), 311.840(3), 314.011(5), (7),~~[(9)]~~, 503.110(1), 527.100, 527.110, 600.020, 605.090(1), 610.110(6), ~~610.125~~, 615.010-615.990, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), Chapter 625, 16 C.F.R. ~~1219-1220~~~~14508 and 1509~~, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671~~[(a)(23)]~~, 42 U.S.C. 677(a)~~[(1)-(6)]~~, 14901-14954

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

- (a) Incidents;
- (b) High risk behaviors; and
- (c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(4) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

- (a) Foster home; or
- (b) Adoptive home.

(5) "Board of directors" is defined by KRS 273.161(8)~~[(7)]~~.

(6) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(7) "Child" is defined by KRS 199.011(4) and 600.020(8)~~[and may include:~~

- ~~(a) A person age eighteen (18) or older whose commitment to~~

~~the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or~~

~~(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015].~~

(8) "Child with medical complexity" means a child who is determined to have a medical condition pursuant to 922 KAR 1:350, Section 1(5).

(9) "Child-placing agency" is defined by KRS 199.011(7).

(10)~~[(9)]~~ "College or university" means:

(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(11)~~[(40)]~~ "Community resource" means a service or activity available in the community in addition to~~[that supplements]~~ those provided by the child-placing agency in the care and treatment of a child.

(12)~~[(44)]~~ "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(13)~~[(42)]~~ "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(9) and 600.020(28)~~[(26)]~~, if referring to a physical structure; or

(b) Any individual approved as a foster parent by the child-placing agency, if referring to an individual.

(14) "Health professional" means a person actively licensed as

a:

(a) Physician as defined by KRS 311.720(9);

(b) Physician's assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15)~~[(43)]~~ "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker that meets the requirements specified in Section 4(3) of this administrative regulation.

(16)~~[(44)]~~ "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in 922 KAR 1:340~~[Section 17(1) of this administrative regulation].~~

(17)~~[(45)]~~ "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(18)~~[(46)]~~ "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

~~[(17)] "Licensed health care professional" is defined by KRS 216.300(1).~~

~~(18) "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350.]~~

(19) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(20) "Placement" means:

(a) The physical relocation of a child removed from the child's home of origin with a provider of out-of-home services; or

(b) A foster or adoptive home that has been approved by completing an application process, home study, and required preparation.

(21) "Program director" means the person responsible for supervising the day-to-day operation of the program.

(22) "Respite care" means temporary care provided by another individual or family that meets requirements specified in Section 13 of this administrative regulation ~~to~~~~[(a)]~~ provide relief to a foster care parent, therapeutic foster care parent, or medically complex~~[medically-fragile]~~ foster parent with the expectation that

the child will return to the foster home[; or (b) Allow an adjustment period for the child placed in out-of-home care].

(23) "Sex crime" is defined by KRS 17.500(8).

(24) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(25) "Social services worker" means a person retained by a child-placing agency who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(26) "Supervision plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(27) "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(28) "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(29) "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program shall be an optional component of the child-placing agency's license in accordance with 922 KAR 1:340.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission on Accreditation for Healthcare Organizations.

(d) The cabinet shall revoke a license if a child-placing agency fails to:

1. Become accredited in accordance with paragraph (c) of this subsection; or

2. Maintain accreditation.

(e) The child-placing agency shall provide proof of accreditation to the Office of Inspector General, Division of Regulated Child Care:

1. Upon receiving initial accreditation; and
2. At the time of annual inspection for re-licensure.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

- (a) Consist of a minimum of seven (7) members;
- (b) Meet at least quarterly;
- (c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;

(e) Approve a mission statement;

(f) Establish and revise, when necessary, the child-placing agency's [delineating the]:

1. Purpose;
2. Objective;
3. Scope of services to be provided; and
4. Intake policy specifying the type of child to be accepted for care;

(g) [(f)] Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

[(h) [(g)]] Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and

3. Report to the board, on a quarterly basis, the following:

- a. Evaluation of program services;
- b. Measurement of attainment of the objective established pursuant to subsection (2)(f)2[(2)(e)2] of this section;
- c. Staff training; and
- d. Incident reports.

(b) The criteria and process of the evaluation required in paragraph (a)3a of this subsection shall be approved by the board annually.

(c) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1.a. A master's degree from a college or university in any of the following human services fields:

- (i) Social work;
- (ii) Sociology;
- (iii) Psychology;
- (iv) Guidance and counseling;
- (v) Education;
- (vi) Religious education;
- (vii) Business administration;
- (viii) Criminal justice;
- (ix) Public administration;
- (x) Child-care administration;
- (xi) Nursing;
- (xii) Family studies; or
- (xiii) Another human service field related to working with families and children; and

b. Two (2) years of work experience in a human services program; or

2.a. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph; and

b. [(b)] Four (4) years of work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years of professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for ~~social work, counseling or~~ planning and coordinating services to a child; and

2. Hold at least a bachelor's degree from a college or university in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program;

2. Hold at least a master's degree from a college or university in a human services discipline; and

3. Have at least five (5) years of total experience in mental health treatment, with a minimum of three (3) years of experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e) 1. A child-placing agency contracting for the service of a social services worker not on the staff of the child-placing agency shall obtain documentation that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social service staff.

(g) [(h) In a therapeutic foster care program, a person meeting the qualifications of] A treatment director shall carry out approval and evaluation of services.

(h) 1. Social services staff shall not carry a caseload of more than twenty (20) children.

2. If a social services worker carries a caseload of children in some combination of foster care, therapeutic foster care, medically complex foster care, or an independent living program, the allowable caseload for the social services worker shall be determined by:

a. Dividing the number of children in each placement type on the worker's caseload by the maximum caseload for the placement type to derive a percentage;

b. Adding each percentage calculated in clause a. of this subparagraph to derive a sum; and

c. Maintaining the sum derived in clause b. of this subparagraph at or below 100 percent.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age;

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and

3. Submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 once every two (2) years.

(c) 1. If a substantiated ~~finding~~[~~allegation~~] of abuse, neglect, or exploitation of a child has been made against a person, a child-placing agency shall not employ the person or allow the person to volunteer in a position involving direct contact with a child.

2. The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with 922 KAR 1:330 and 922 KAR 1:480.

(d) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree from a college or university, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records and central registry checks pursuant to paragraph (b)2 and 3 of this subsection;

6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;

7. Personnel action;

8. Application for employment, resume, or contract; and

9. Evidence of personnel orientation.

(e) ~~A~~[~~The~~] child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall:

1. Be immediately removed from contact with a child; and

2. Not be allowed to work with ~~a~~[~~the~~] child until:

a. A prevention plan has been written and approved by a designated regional cabinet staff;

b. The person is cleared of the charge; or

c. A cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child:

(i) Abuse;

(ii) Neglect; or

(iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth;

2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and

3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

(6) Physical management. If a child-placing agency uses physical management, the agency shall have established guidelines and policies governing the use of physical management that shall be:

(a) Consistent with accreditation standards; and

(b) In accordance with 922 KAR 1:300.

(7) Notifications. A licensed child-placing agency shall provide written notification within one (1) week to the Office of Inspector General, Division of Regulated Child Care when there is a change in the following leadership staff:

(a) Executive director;

(b) Program director; and

(c) Treatment director.

(8) Child. For purposes of this administrative regulation, a child may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, ~~a~~[~~the~~] child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children;

(b) KRS 615.010, Interstate Compact for Juveniles; and

(c) 42 U.S.C. 671(a)(23).

(2) ~~If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-placing agency personnel, the child-placing agency shall obtain prior consent of designated regional cabinet staff.~~

(3) A child-placing agency shall comply with subsection (1) of this section if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period as ascertained from the academic calendar of the school.

(3) ~~(4)~~ If an emergency placement of a child into a licensed child-placing agency is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040.

Section 4. Evaluation of an Applicant. (1) A child-placing agency's social services staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) ~~Two (2) family consultations~~[~~A personal interview~~] with each member of the applicant's household;

(b) An assessment of the attitude of each member of the applicant's household toward the placement of a child into the home or adoption;

(c) Observations of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(d) The applicant's ability to accept a child's relationship with the child's family of origin;

(e) Proof of the applicant's:

1. Identity, such as a federally or state-issued photo identification card;

2. Age of twenty-one (21) years or older, unless an exception is granted pursuant to subsection (4) of this section; and

3. United States citizenship ~~or legal immigrant status~~[~~, such as a birth certificate, or legal alien status, such as a permanent resident card,~~] as described in 8 U.S.C. 1151;

(f) A statement for each member of the applicant's household that shall:

1. Be signed by a health professional who is not a member of the applicant's household; and

~~2. Verify licensed physician or licensed health care professional verifying~~ that the individual:

~~a.[1.] Is free of a communicable or infectious disease; and~~

~~b.[2.] Has no illness or condition that would present a health or safety risk to a child placed in the applicant's home;~~

(g) A signed statement by a ~~licensed physician or licensed~~ health professional regarding the applicant's physical ability to provide necessary care for a child;

(h) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(i) Documentation of references to include:

1. The name of three (3) personal references who:

~~a.[1.] Are not related to the applicant; and~~

~~b.(i)[2-a.] Shall be interviewed by the child-placing agency staff in person or by telephone; or~~

~~(ii)[b.] Shall provide letters of reference for the applicant; and~~

~~2. Two (2) credit references;~~

(j) Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;

(k) Documentation of an in-person or telephone ~~any~~ interview with ~~each an~~ adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history unless a documented exception exists and is approved by the program director;

(l) If applicable, verification from the applicant regarding a:

1. Previous divorce;

2. Death of a spouse; or

3. Present marriage;

(m) If the applicant does not have custody of the applicant's own child:

1. A copy of a visitation order;

2. A copy of a child support order; and

3. Proof of current payment of child support;

(n) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household in accordance with criteria established in 922 KAR 1:490;

(o) Documentation that the applicant has access to:

1. Transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

2. School;

3. Recreation;

4. Medical care; and

5. Community facilities;

(p) If an applicant or household member will be transporting a foster child;

1.[.] Proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage; and

2. Documentation that the applicant or household member shall abide by passenger restraint laws;

(q) Documentation that the applicant's home:

1. Does not present a hazard to the health and safety of a child;

2. Is well heated and ventilated;

3. Complies with state and local health requirements regarding water and sanitation; and

4. Provides indoor and outdoor~~in- or out-of-door~~ recreation space appropriate to the developmental needs of a child placed in the applicant's home;

(r) Verification that:

1. No more than four (4) children, including the applicant's own children, shall share a bedroom;

2. Thorough consideration shall be given to age, gender, and background when children share a bedroom;

3. Children of different genders over the age of five (5) shall not share a bedroom;

4. A bedroom used by a child in the custody of a state agency shall be comparable to other bedrooms in the house; and

5.[2.] A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;

(s) Verification that an individual bed:

1. Is provided for each child in the home;

2. If the child is under age one (1), is a crib that meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1219-1220~~1458 and 1459~~; and

3. Is age and size appropriate for the child; and

4. Has a mattress that:

a. Meets current Consumer Products Safety Commission Standards;

b. Is in good repair; and

c. Has a clean tight-fitted sheet that shall be changed:

(i) Weekly; or

(ii) Immediately if it is soiled or wet;

(t) Verification that[.]

~~1. Medication is locked, unless an exception is granted pursuant to subsection (10) of this section; and~~

~~2.] the following are inaccessible to a child:~~

~~1.[a.] Alcoholic beverages;~~

~~2.[b.] Poisonous or hazardous materials; [and]~~

~~3.[c.] Ammunition and firearms in accordance with KRS 527.100 and 527.110;~~

4. An animal that presents a danger to a child; and

5. Medication unless an exception is granted pursuant to subsection (10) of this section;

(u) Proof that the applicant has:

1. First aid supplies with unexpired dates available and stored in a place easily accessible by the foster parent;

2. A working telephone;~~and~~

3. A working smoke alarm within ten (10) feet of each bedroom;

4. A working carbon monoxide detector in a home with gas heating or appliances; and

5. Any household animal vaccinated in accordance with KRS 258.015 and 258.035;

(v) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

1. Hours of operation;

2. Type of business; and

3. Clientele; and

(w) If an applicant was approved to foster or adopt a child by another child placing agency or the cabinet and the applicant's home was closed;

1.[.] Verification of the closure; and

2. A statement to indicate whether the closure was at the request of the applicant or the agency.

(4) Exception to subsection (3)(e)2 of this section shall be granted if the applicant is:

(a) Between eighteen (18) and twenty-one (21) years of age;

(b) A relative of the child to be placed in the applicant's home; and

(c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, a[the] child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(6)(a) A[Following approval as a foster home, the approving] child-placing agency shall[may] request written approval from the state agency with custody of the child, for the foster home to provide services as a[certified]:

1. Certified provider of Supports for Community Living in accordance with 907 KAR 1:145;

2. Therapeutic foster care provider for adults in accordance with 907 KAR 3:030;~~or~~

3. Certified family child-care~~child-care~~ home in accordance with 922 KAR 2:100; or

4. Licensed child-care center in accordance with 922 KAR 2:090.

(b)~~[Except as provided in paragraph (a) of this subsection,] An approved foster home shall not simultaneously[1. Provide day care center services in accordance with 922 KAR 2:090; and 2.] be used as a licensed or certified health care or social service provider for a child in the foster home's care.~~

(7) An employee of the department who provides protection

and permanency services shall be prohibited from becoming a foster parent or respite care provider for a child in the custody of the cabinet, unless the:

(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and

(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child.

(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the: ~~(a) Employee had: 1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child; or 2. Adopted a sibling of the child available for adoption; and (b)]~~ commissioner approves, in writing, the employee to adopt.

(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as:

1. A foster parent;
2. An adoptive parent; or
3. A respite care provider.

(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:

1. A conflict of interest; or
2. Misuse of influence.

(10) A child-placing agency may make an exception to subsection ~~(3)(t)5[(3)(t)4]~~ of this section if:

(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;

~~(b)1. The child is approved by a health professional[learning] to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; or~~

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(c) Measures are taken to prevent unauthorized access by another child in the same home.

(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:

(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and

~~(b)[4-] Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 18[49] of this administrative regulation; and~~

~~2.] If an applicant lacks training in accordance with [subparagraph 1 of] this paragraph, the child-placing agency shall, prior to placement of a child in the home:~~

~~1.[a.] Provide training in accordance with Section 5, 7, 10, 13, or 18[49] of this administrative regulation; or~~

~~2.a.[b.(i)] Develop an individualized curriculum to fulfill unmet training needs; and~~

~~b.[(ii)] Document the applicant's compliance with the individualized curriculum.~~

Section 5. Orientation and Preparation of a Foster Home. (1) With the exception of training requirements specified in 922 KAR 1:495 for a foster home that cares for a child in the custody, a child-placing agency shall:

~~(a)[(1)] Develop and maintain an orientation and preparation curriculum to be kept on file;~~

~~(b)[(2)] Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:~~

~~[(a)]1. Child-placing agency program description with mission statement;~~

~~2. Information about the rights and responsibilities of the home;[and]~~

~~3. Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);~~

~~4.[(b)] An example of an actual experience from a foster parent~~

that has fostered a child;

~~5.[(e)] Information regarding:~~

~~a.[1-] The stages of grief;~~

~~b.[2-] Identification of the behavior linked to each stage;~~

~~c.[3-] The long-term effect of separation and loss on a child;~~

~~d.[4-] Permanency planning for a child, including independent living services;~~

~~e.[5-] The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;~~

~~f.[6-] Family functioning, values, and expectations of a foster home;~~

~~g.[7-] Cultural competency;~~

~~h.[8-] How a child enters and experiences foster care, and the importance of achieving permanency; and~~

~~i.[9-] The importance of birth family and culture and helping children leave foster care;~~

~~6.[(d)] Identification of changes that may occur in the home if a placement occurs, to include:~~

~~a.[1-] Family adjustment and disruption;~~

~~b.[2-] Identity issues; and~~

~~c.[3-] Discipline issues and child behavior management; and~~

~~7.[(e)] Specific requirements and responsibilities of a foster parent; and [-]~~

~~(c)[(3)] Maintain an ongoing foster home preparation and training program that:~~

~~1.[(a)] Provides a minimum of six (6) hours of foster home training annually; and~~

~~2.[(b)] Maintains a record of preparation and training completed.~~

(2) Training provided in accordance with 922 KAR 1:495 may be utilized for a foster home that does not care for a child in the custody of the cabinet if the governmental agency or individual with oversight of the child approves the training.

Section 6. Placement, Case Management, and Supervision of a Child in a Foster Home, Medically Complex~~Medically fragile~~ Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Place a child only in an approved foster home; and

(b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

(2) A child-placing agency shall select a foster home for a child based upon the individual needs of the child, including:

(a) The child's assessment and ITP, if available;

(b) Any information concerning the child's needs in placement; and

(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section; or another child in the foster home.

(3) A child shall participate in the intake process~~[and in the decision that placement is appropriate;]~~ to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

(4) Unless an exception is granted pursuant to subsection (6) of this section,[-]

~~(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.~~

~~(b)] the number of children residing in a foster home[that cares for a child in the custody of the cabinet] shall not exceed five (5), including the foster parent's own children.~~

(5) Unless an exception is granted pursuant to subsection (6) of this section, a child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, including children placed in the custody of the cabinet and the foster parent's own children~~[with the exception of a sibling group, who may remain together].~~

(6)(a) Justification for an exception to subsection (4)[(a)] or (5) of this section shall be:

1. Documented in the foster parent file; and
2. Authorized by the program director.

(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a DPP-112B, Private Child-Placing Agency Placement Exception Request, [a—written justification] for an exception to subsection (4)[(b)] or (5) of this section to designated cabinet staff prior to the proposed placement documenting:

1. The reason the placement is in the best interest of the child; and
2. Specific support services to be provided[in accordance with 922 KAR 4:350, Section 2(2)].

(7) A[The] child-placing agency shall:

- (a) Assess a child to be placed in foster care;
- (b) Within thirty (30) days of a child's placement, develop:
 1. An ITP;
 - a. Based upon the individual strengths and needs of the child and, if appropriate, the child's family, which addresses the:
 - (i)[a-] Visitation, health, and educational needs of the child;
 - (ii)[b-] Child's permanency goals and related objectives;
 - (iii)[c-] Methods for accomplishing each goal and objective; and
 - (iv)[d-] Designation of an individual or individuals responsible for completion of each goal and objective; and
 - b. With the child and the child's parent:
 - (i) That includes offering the child the opportunity to sign the ITP signifying the child's understanding; and
 - (ii) Unless a circumstance exists which precludes engagement of the child or the child's parent from occurring and is documented in the child's case record; and
 2. A supervision plan for the child which:
 - a. Is attached to the child's ITP;
 - b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:
 - (i) Incidents;
 - (ii) High-risk behaviors; and
 - (iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;
 - c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;
 - d. Is signed and dated by the social service worker and foster home parent; and
 - e. Remains a part of the child's record;
 - (c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;
 - (d) Have a written agreement with the foster home stating the:
 1. Responsibilities of the:
 - a. Child-placing agency; and
 - b. Foster home; and
 2. Terms of each placement;
 - (e) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;
 - (f) Document a placement in the foster home file;
 - (g) Report immediately to the state agency which has custody of the child if there is:
 1. A hospitalization or life-threatening accident or illness;
 2. An absence without official leave;
 3. A suicide attempt;
 4. Criminal activity by the child requiring notification of law enforcement;
 5. Death;[or]
 6. Possession of a deadly weapon by a child;
 7. [h] Report, if applicable, within two (2) business days to the state agency which has custody of the child if there is a:
 1. Change in address;
 2. Change in the number of people living in the home; or
 3. Significant change in the foster home, such as changes in health or income status of an individual living in the foster home;
 - (h)[(i)] Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in Section 2(4)(c) of this administrative regulation to:

1. Include:
 - a. Frequency of an in-home visit with the foster parent;
 - b. Means of supervision;
 - c. Methods of supervision; and
 - d. Personnel conducting the supervision;
2. Ensure a foster child's placement stability and safety; and
3. Be individualized, as needed, for the:
 - a. Child; or
 - b. Foster home;

(i)[(j)] Identify and make available necessary supports to a foster home, including:

1. A plan for respite care in accordance with Section 13 of this administrative regulation;
2. Twenty-four (24) hour crisis intervention; and
3. A foster home support group;

(j)[(k)] Assure that a child receives care and services, including independent living services:

1. In accordance with Section 16 of this administrative regulation; and
2. As prescribed by the child's needs as assessed in the child's ITP;

(k)[(l)] Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;

(l)[(m)] Inform the foster parent, in accordance with KRS 605.090(1)(b), of:

1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and
2. Any behaviors of the child that indicate a safety risk for the placement;

(m)[(n)] Document each effort to:

1. Protect the legal rights of the family and the child; and
2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;

(n)[(o)] Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(o)[(p)] Be responsible for monitoring the child's school progress and attendance;

(p)[(q)] Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;

(q)[(r)] Reassess and document quarterly, in the child's ITP, placement and permanency goals, including independent living services, in accordance with Section 16 of this administrative regulation;

(r)[(s)] Conduct and document a face-to-face visit with the child at least once per month; and

(s)[(t)] Maintain foster care records in accordance with Section 17[48] of this administrative regulation.

(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

- (a) Placed with a family that normally resides in another state; or
- (b) Permitted to go with a person to take up residence in another state.

(9)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement described in subsection (7)(d) of this section.

(b) Results shall be recorded in the foster parent file.

(10) Factors that shall result in a review of a foster home shall include:

- (a) Death or disability of a family member;
- (b) Sudden onset of a health condition that impairs a foster parent's ability to care for a child placed in the home;
- (c) Change in marital status or home address;
- (d) Sudden, substantial decrease in, or loss of, income;
- (e) Child birth;
- (f) Use of a form of punishment that includes:
 1. Cruel, severe, or humiliating actions;
 2. Corporal punishment inflicted in any manner;
 3. Denial of food, clothing, or shelter;
 4. Withholding implementation of the child's ITP;

5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and

6. Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that is:

1. Substantiated; or

2. Reveals concern regarding the care of the child;

(h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;

(i) An incident required to be reported in accordance with subsection (7)(g) of this section and Section 6(7)(g) and (h), and 12(6) and (7) of this administrative regulation; or

(j) Other factors identified by a child-placing agency that jeopardize the physical, mental, or emotional well-being of the child.

(11) The documentation of a review, specified in subsection (10) of this section, shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An assessment of the family functioning to determine if the child's needs are met; and

(e) Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall maintain the orientation and preparation curriculum on file.

(2) Unless a therapeutic foster care home cares for a child in the custody of the cabinet and is subject to training requirements specified in 922 KAR 1:495, a child-placing agency shall and (b) provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

(a) Child-placing agency program description with mission statement;

(b) Information about the rights and responsibilities of the therapeutic foster care home; and

(c) Background information about a foster child and the child's family;

(d) An example of an actual experience of a therapeutic foster care parent that has fostered a child;

(e) Stages of grief;

(f) Behaviors linked to each stage of grief;

(g) Long-term effects on a child from separation and loss;

(h) Permanency planning for a child, including independent living services;

(i) Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;

(j) Family functioning, values, and expectations of a therapeutic foster care home;

(k) Changes that may occur in the home with placement of a child regarding:

1. Family functioning;

2. Family adjustment;

3. Identity issues;

4. Discipline issues and child behavior management; and

5. Family disruption;

(l) Specific requirements and responsibilities of a therapeutic foster care home;

(m) Behavior management;

(n) Communication skills;

(o) Skill teaching;

(p) Cultural competency;

(q) Behavior management de-escalation techniques;

(r) The dynamics of a sexually abused child who has experienced sexual abuse or human trafficking; and

(s) The effect of chemical abuse or dependence by the child or the child's biological parent.

(3) A therapeutic foster care home shall receive:

(a) A minimum of twenty-four (24) hours of annual training; or

(b) Training in accordance with 922 KAR 1:495 if the home provides care to a child in the custody of the cabinet.

(4) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:

(a) Provides training to meet requirements of subsection (2) of this section a minimum of twenty-four (24) hours of annual training; and

(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

(a) May benefit from care in a family setting; and

(b) 1. Has clinical or behavioral needs that exceed supports available in a foster home; or

2. Is transitioning from group care as part of the process of returning to family and community.

(2) Unless an exception is granted pursuant to subsection (3) of this section, the number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet shall be limited to a total of five (5) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:

(a) Documented in the therapeutic foster care parent's file; and

(b) Authorized by the treatment director.

(4) Unless an exception is granted pursuant to subsection (5) of this section, the number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) To make a request for an exception to subsection (4) of this section, a child-placing agency shall follow the procedure set forth in Section 6(6)(b) of this administrative regulation 922 KAR 1:350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)2, for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment, ITP, and supervision plan as specified in Section 6(7) of this administrative regulation;

(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;

(c) Adequate supervision of the child and implementation of components of the ITP, including daily log documentation as specified in the ITP;

(d) Working with the child-placing agency to promote stability and avoid disruption for the child; and

(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and (f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, a child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan if applicable; and

(b) Inviting and encouraging attendance to the preplacement conference by:

1. The prospective therapeutic foster care home;

2. A respite care provider approved in accordance with Section

- 13(4) of this administrative regulation;
3. The child, if appropriate; and
 4. The child's family.
- (10) The social services worker shall:
- (a) Have a[first] face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;
 - (b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;
 - (c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;
 - (d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;
 - (e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;
 - (f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:
 1. Required responsibilities other than the case management of a child in foster care;
 2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served;~~and~~
 3. The intensity of services provided to the child and the child's family; and
 4. Caseload expectations established in Section 2(4)(h) of this administrative regulation;
 - (g) Conduct a quarterly case consultation, including the:
 1. Foster home;
 2. Child's public agency worker;
 3. Child-placing agency treatment director and social services worker; and
 4. Child and the child's family of origin, to the extent possible;
 - (h) Identify the support needed by the foster family, including a:
 1. Plan for respite care as provided in Section 13 of this administrative regulation;
 2. Plan for twenty-four (24) hour on-call crisis intervention; and
 3. Foster home support group;
 - (i) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and
 - (j) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.
- (11) ~~A[The]~~ child-placing agency shall:
- (a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and
 - (b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9.~~[Medically-fragile]~~ Child With Medical Complexity. (1) ~~A[medically-fragile]~~ child with medical complexity shall be:

- (a) A child in the custody of the cabinet; and
 - (b) Determined by the cabinet to meet the child with medical complexity~~[medically-fragile]~~ requirements of 922 KAR 1:350.
- (2) The decision to accept a~~[medically-fragile]~~ child with medical complexity shall be optional to a child-placing agency.
- (3) If a child placed with a child-placing agency in a ~~non-medically complex~~~~[non-medically-fragile]~~ foster home becomes medically complex~~[medically-fragile]~~ in accordance with subsection (1) of this section, the Division of Protection and Permanency director~~[commissioner]~~ or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically Complex~~[Medically-fragile]~~ Foster Home. (1) A child-placing agency shall create a medically complex~~[medically-fragile]~~ foster home only if the child-placing agency has:

- (a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically complex~~[medically-fragile]~~ training in accordance with subsection (2)(b) and (c) of this section; and
 - (b) A liaison established with the cabinet.
- (2) A foster home shall be approved to care for a~~[medically-~~

~~fragile]~~ child with medical complexity by a child-placing agency if the foster home:

(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

(b) Completes training as specified in 922 KAR 1:495, Section 4~~], in addition to training specified in Section 5 of this administrative regulation:~~

1. Twenty-four (24) hours of cabinet training to include first aid and cardiopulmonary resuscitation (CPR) certification if the foster parent is not currently certified in first aid and CPR;

2. Sixteen (16) hours of cabinet training if the foster parent is currently certified in first aid and CPR; or

3. Training approved in advance by the cabinet, in the areas of:

a. Growth and development;

b. Nutrition; and

c. Medical disabilities;

(c) Maintains certification in:

1. Infant, child, and adult CPR; and

2. First aid;

(d) Is located within a:

1. One (1) hour drive of a medical hospital with an emergency room; and

2. Thirty (30) minute drive of a local medical facility; and

(e) Is evaluated in accordance with Section 4 of this administrative regulation.

(3)~~[Professional experience related to the care of a medically-fragile child may substitute for the training requirement of the medically-fragile foster parent as specified in subsection (2)(b) and (c) of this section:~~

(a) Upon the approval by a designated cabinet staff; and

(b) If the foster parent is one (1) of the following licensed health care professionals:

1. Physician as defined in KRS 311.720(9);

2. Registered nurse as defined in KRS 314.011(5);

3. Licensed practical nurse as defined in KRS 314.011(9);

4. Physician's assistant as defined in KRS 311.840(3); or

5. ~~Advanced registered nurse practitioner as defined in KRS 314.011(7).~~

(4) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a~~[medically-fragile]~~ child with medical complexity in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.

(4)~~(5)~~ An approved medically complex~~[medically-fragile]~~ foster home shall receive annual reapproval, if the foster home:

(a) Annually completes ongoing training as specified by subsection (2)(b) and (c) of this section; and

(b)~~[Completes the training before the anniversary date of approval as a medically-fragile foster home; and~~

(c) Continues to meet the requirements in Section 15 of this administrative regulation.

(5)~~(6)~~ Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically complex~~[medically-fragile]~~ foster parent's own children, shall reside in a medically complex~~[medically-fragile]~~ foster home, with no more than two (2) children being medically complex or requiring therapeutic foster care.

(6)~~(7)~~ Unless an exception is approved by designated cabinet staff, a:

(a) One (1) parent medically complex~~[medically-fragile]~~ foster home shall not care for more than one (1)~~[medically-fragile]~~ child with medical complexity; and

(b) Two (2) parent medically complex~~[medically-fragile]~~ foster home shall not care for more than two (2)~~[medically-fragile]~~ children with medical complexity.

(7) Unless an exception is approved prior to placement by the Division of Protection and Permanency director or designee, a child with medical complexity shall not be placed in a placement other than an approved medically complex home.

(8) A child-placing agency shall request an exception to subsection (5) ~~through (6) or~~ (7) of this section, in accordance with Section 6(6)(b) of this administrative regulation~~[922 KAR 1:350, Section 2(2)].~~

Section 11. Placement of a ~~Medically-fragile~~ Child With Medical Complexity. (1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved ~~medically complex~~~~medically-fragile~~ foster parent shall receive training on how to care for the specific needs of a ~~medically-fragile~~ child with medical complexity placed in the home.

(b) The training shall be conducted by a ~~licensed~~ health~~care~~ professional.

(2) Unless an exception is granted pursuant to subsection (3)(a) of this section, a ~~medically-fragile~~ child with medical complexity shall be placed in an approved ~~medically complex~~~~medically-fragile~~ foster home.

(3) A child-placing agency shall:

(a) Request an exception to subsection (2) of this section in accordance with Section 6(6)(b) of this administrative regulation~~922 KAR 1:350, Section 2(2)~~;

(b) Provide case management services:

1. As described in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. In accordance with the child's:

a. Health plan developed by designated cabinet staff;

b. ITP; and

c. Supervision plan;

(c) Support the child's health plan developed by designated cabinet staff; and

(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, Therapeutic Foster Care Home, or ~~Medically Complex~~~~Medically-fragile~~ Foster Home. An approved foster parent, ~~medically complex foster parent~~, or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development~~[training]~~;

(e) Recreational opportunities;

(f) Education opportunities;

(g) Nonmedical transportation;

(h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;

(i) Adequate supervision; and

(j) Independent living services for a child twelve (12) years of age or older;

(2) Permit a child-placing agency and staff of a state agency to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency fourteen (14) calendar~~ten (10)~~ days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:

(a) Leaving the state with a child placed by the child-placing agency for more than twenty-four (24) hours~~two (2) nights~~; or

(b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than twenty-four (24) hours~~three (3) days~~;

(6) Report immediately to the child-placing agency through which the child is placed~~;~~ if there is:

(a) A hospitalization or life-threatening accident or illness;

(b) An absence without official leave;

(c) A suicide attempt;

(d) Criminal activity by the child requiring notification of law enforcement;

(e) Death of any member in the household~~;~~~~or~~;

(f) A child's possession of a deadly weapon;

g~~(7)~~ Report, if applicable, within two (2) business days to the child-placing agency if there is a:

~~(a)~~ Change in address;

~~(h)~~~~(b)~~ Change in the number of people living in the home;

~~(i)~~~~(e)~~ Significant change in circumstance in the foster home;

or

~~(j)~~~~(d)~~ Failure of the foster child or foster parent to comply with the supervision plan;

~~(7)~~~~(8)~~ Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

~~(8)~~~~(9)~~ Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

~~(9)~~~~(10)~~ Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

~~(10)~~~~(11)~~ Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

~~(11)~~~~(12)~~ Participate in a case planning conference concerning a child placed by the child-placing agency;

~~(12)~~~~(13)~~ Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

~~(13)~~~~(14)~~ Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

~~(14)~~ Facilitate the delivery of~~(15)~~ Provide medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b)~~[Annual]~~ Physicals and examinations for the child;

~~(15)~~~~(16)~~ Treat a child placed by the child-placing agency with dignity;

~~(16)~~~~(17)~~ Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

~~(17)~~~~(18)~~ Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically Complex~~Medically-fragile~~ Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(2)~~3(3)~~ of this administrative regulation.

(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by Section 4(3)(e), (g), and (n) through (v) of this administrative regulation.

(5) A respite care provider shall:

(a) Receive, from the agency or foster parent, preparation for placement of a child, including:

1. Information in accordance with KRS 605.090(1)(b); and

2. Information regarding the supervision plan of the child;

(b) Provide adequate supervision in accordance with the child's supervision plan;~~and~~

(c) 1. Give relief to a foster parent caring for a child; or

2. Provide for an adjustment period for a child;

d Meet the requirements of Section 6(4) through (6) of this administrative regulation; and

e Meet the requirements of Section 8(4) if the provider cares for a child requiring therapeutic foster care.

(6) A respite care provider for a ~~medically-fragile~~ child with medical complexity shall:

(a) Meet the requirements of Section 10(4) through (6)~~10(2)(b) through (d) or 10(3)~~ of this administrative regulation;~~and~~

(b) Receive training on how to meet the specific needs of

the[medically-fragile foster] child with medical complexity from:

1. A[~~licensed~~] health[~~care~~] professional; or
2. The foster parent trained by a[~~licensed~~] health[~~care~~] professional; and

(c) Maintain certification in:

1. Infant, child, and adult CPR; and
2. First Aid.

Section 14. Private Placement Process. Except for a child in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, ~~a[the]~~ child-placing agency shall be responsible for the following if a private placement is conducted:

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

- (a) Agreement for voluntary care signed by the custodian; or
- (b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

- (a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and
- (b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs prior to the child being placed out of state or no later than[within] thirty (30) days of the child's placement with the child-placing agency.

(b) An exception to the requirement specified in paragraph (a) of this subsection may be made for a child:

1. Under the age of twelve (12) months; and
2. With no extraordinary needs.

(c)[(b)] The assessment shall be revised as needed.

(d)[(e)] The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(e) Assessment of the child shall include consideration of the following history:

1. Behavioral health treatment;
2. Trauma;
3. Risk for harm to self or others; and
4. Past behaviors or safety issues that could increase the likelihood of placement disruption.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and

(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

- (a) Family of origin;

(b) Treatment director;

(c) Social services worker; and

(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.

(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and
2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. (1) Annually, a child-placing agency shall:

(a)[(4)] Conduct a personal interview in the home with an approved:

1. (a)] Adoptive home awaiting placement; or
2. (b)] Foster home; and

(b)[(2)] Assess:

1. (a)] Any change in the home;
2. (b)] The ability of the home to meet the needs of a child placed in the home; and

3. (c)] The home's continued compliance with the requirements of this administrative regulation in:

a.[1-] Section 4(3)(h), (j), and (l) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

b.[2-] Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;

c.[i]3-a.] Sections 5(3) or 7(3)(a)[5(3)(a), 7(2), or 10(5)(a)] of this administrative regulation, with regard to annual training, if the home is approved as a foster home; or

(ii) 922 KAR 1:495 with regard to annual training if the home is approved to receive a child in the custody of the cabinet; and

d.[4-] Section 18(3)[19(3)] of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2)[(3)] After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent's household shall comply with a child-placing agency's request for a statement regarding the parent, provider, or household member's general health and medical ability to care for a child.

(3)[(4)] If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and
2. Who is twelve (12) to twenty-one (21) years of age;

(b) Directly or indirectly through a foster parent with whom the child is placed;

(c) As prescribed in the child's ITP; and

(d) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and
2. Sixteen (16) years of age and older; and
- (b) Developed in accordance with 922 KAR 1:340, Section 3(1)(a), [Section 17(1)(e) of this administrative regulation.

Section 17. Independent Living Programs. (1) A child-placing agency providing independent living programming shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within fourteen (14) days of a child's placement with the child-placing agency and provision of services by the agency's independent living program; and

2. Using a tool to assess:

a. Money management and consumer awareness;

b. Job search skills;

c. Job retention skills;

d. Use of and access to:

i. Community resources;

ii. Housing; and

iii. Transportation;

e. Educational planning;

f. Emergency and safety skills;

g. Legal knowledge;

h. Interpersonal skills, including communication skills;

i. Health care knowledge, including knowledge of nutrition;

j. Human development knowledge, including sexuality;

k. Management of food, including food preparation;

l. Ability to maintain personal appearance;

m. Housekeeping; and

n. Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement with a child-placing agency in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;

2. Objectives to accomplish a goal;

3. Methods of service delivery necessary to achieve a goal and an objective;

4. Person responsible for each activity;

5. Specific timeframes to achieve a goal and an objective;

6. Identification of a discharge plan;

7. Plan for aftercare services; and

8. Plan for services from a cooperating agency;

(c) Maintain written policies and procedures for the independent living program;

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:

1. Content of the independent living curriculum;

2. Use of the independent living materials;

3. Application of the assessment tool; and

4. Documentation methods used by the child-placing agency;

and

(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a), including:

1. Money management and consumer awareness;

2. Job search skills;

3. Job retention skills;

4. Educational planning;

5. Community resources;

6. Housing;

7. Transportation;

8. Emergency and safety skills;

9. Legal skills;

10. Interpersonal skills, including communication skills;

11. Health care, including nutrition;

12. Human development, including sexuality;

13. Food management, including food preparation;

14. Maintaining personal appearance;

15. Housekeeping;

16. Leisure activities;

17. Voting rights and registration;

18. Registration for selective service, if applicable;

19. Self-esteem;

20. Anger and stress management;

21. Problem-solving skills; and

22. Decision-making and planning skills.

(2) A social services worker from an independent living program shall:

(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program and provide supervision in accordance with the child's supervision plan; and

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age; and

(c) Have:

1. Daily face-to-face contact with a child;

a. Sixteen (16) to eighteen (18) years of age; and

b. In the independent living program; or

2. A minimum of one (1) face-to-face, in-home contact per week for a child:

a. Eighteen (18) to twenty-one (21) years of age; and

b. In the independent living program;

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;

2. Use of alcohol; and

3. Illegal contraband;

(e) Maintain a caseload of no more than ten (10) children, including independent living program:

1. Participants sixteen (16) to twenty-one (21) years of age; and

2. Participants' children assigned a Level of Care of III or higher; and

(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3)(a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated; and

(c) Complies with state and local health requirements regarding water and sanitation.

(5) The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Health care and therapeutic services received by a child;

(c) Progress each child has made in the independent living program, including independent living services received;

(d) Progress in an educational program, including vocational education;

(e) An assessment of the child's readiness to live independently; and

(f) The social services worker's contacts with the child, including observation of the child's living arrangement.]

Section 17.[18.] Maintenance of a Foster Care, Medically Complex[Medically-fragile] Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically complex[medically-fragile] foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

- (d) Educational record;
 - (e) Medical and dental record since placement;
 - (f) Social history and assessment;
 - (g) ITP and review;
 - (h) Supervision plan and updates to the plan;
 - (i) Permanency goals, including independent living services;
 - (j) Incident reports, including details of the child's behavior and supervision at the time of the incident;
 - (k) Monthly progress notes based on the ITP and supervision plan;
 - (l) Quarterly revisions to the child's ITP;
 - (m) Correspondence with the:
 - 1. Court;
 - 2. Family;
 - 3. Department for Community Based Services; or
 - 4. Department of Juvenile Justice;
 - (n) Discharge report; and
 - (o) Aftercare plan.
- (3) The foster home's record shall include documentation relating to the:
- (a) Orientation and preparation of the home, including all adult caregivers in the household;
 - (b) Required preparation hours and the topics covered;
 - (c) Placement of the child;
 - (d) Narrative summary of the initial and annual foster home's home study;
 - (e) Supervision of the foster home, including critical incidents;
 - (f) 1. Annual training requirements that are met in accordance with Section 5[5(3)] of this administrative regulation by the foster parent and all adult caregivers in the household; or
 - 2. If applicable, annual training requirements in accordance with Section 7[(2)] or 10[(5)(a)] of this administrative regulation;
 - (g) Background checks in accordance with Sections 4(3)(n) and 15(2)(c)1 of this administrative regulation;
 - (h) Copy of any placement exceptions granted; and
 - (i) If applicable, copy of the written statement of the foster home's closure completed pursuant to Section 22(5)[23(3)] of this administrative regulation.
- (4) A child-placing agency shall:
- (a) Maintain a child or foster home's record for at least three (3) years;
 - (b) After three (3) years of inactivity:
 - 1. Archive the record and have it transferred to one (1) of the cabinet's designated record centers; or
 - 2. Maintain the record in accordance with 725 KAR 1:061 within[permanently by] the child-placing agency;
 - (c) Transfer the record to the cabinet, if:
 - 1. The agency ceases operations; and
 - 2. No other operational governing entity exists; and
 - (d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 18.[19.] Orientation and Preparation of an Adoptive Home for a Child Not in the Custody of the Cabinet. For a child not in the custody of the cabinet, a child-placing agency shall:

- (1) Prepare and maintain the orientation and preparation curriculum on file;
- (2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:
 - (a) An example of an actual experience from a parent who has adopted a child;
 - (b) Challenging behavior characteristics of an adoptive older child;
 - (c) Referral resources for a developmental delay;
 - (d) Transition issues with focus on stages of grief, and a honeymoon period;
 - (e) Loss and the long-term effects on a child;
 - (f) Attachment and identity issues of the child;
 - (g) Cultural competency;
 - (h) Medical issues including referral resources;
 - (i) Family functioning, family values, and expectations of an adoptive home;
 - (j) Identification of changes that may occur in the family unit

upon the placement of a child to include:

- 1. Family adjustment and disruption;
- 2. Identity issues; and
- 3. Discipline; and
- (k) Financial assistance available to an adoptive home; and
- (3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 19.[20.] Adoption Placement Process For a Child Not in the Custody of the Cabinet. (1) A child shall not be placed for adoption until the:

- (a) Adoptive home has been approved;
 - (b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and
 - (c) Child is placed with the child-placing agency for the purpose of adoption placement.
- (2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.
- (3)(a) A child-placing agency licensed by the cabinet shall not use the authority authorizing the agency to place a child for adoption to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.
- (b) The child-placing agency shall comply with provisions of 922 KAR 1:010.
- (4) The child-placing agency shall obtain the following:
- (a) A developmental history of the adoptive child to include:
 - 1. Birth and health history[~~unless an exception is granted pursuant to subsection (5) of this section~~];
 - 2. Early development[~~unless an exception is granted pursuant to subsection (5) of this section~~];
 - 3. Characteristic ways the child responds to people and situations;
 - 4. Any deviation from the range of normal development;
 - 5. The experiences of the child prior to the decision to place the child for adoption;
 - 6. Maternal attitude during pregnancy and early infancy;
 - 7. Continuity of parental care and affection;
 - 8. Out-of-home placement history;
 - 9. Separation experiences; and
 - 10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:
 - a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and
 - b. Including an illness of the biological mother or father;
 - (b) A social history of the biological or legal parent, to include:
 - 1. Name;
 - 2. Age;
 - 3. Nationality;
 - 4. Education;
 - 5. Religion or faith; and
 - 6. Occupation;
 - (c) Information obtained from direct study and observation of the child by a:
 - 1. Social services worker; and
 - 2. Physician or other[~~licensed~~] health[~~care~~] professional;
 - (d) If indicated, information obtained from direct study and observation of the child by a:
 - 1. Foster parent;
 - 2. Nurse;
 - 3. Psychologist; or
 - 4. Other consultants; and
 - (e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:
 - 1. Determining the father's parental rights; and
 - 2. Establishment of possible hereditary endowments.
- (5)[~~Exception to subsection (4)(a)1 and 2 of this section may~~

be granted, if the adoption involves a child born in a country other than the United States.

(6) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(6)(7) Prior to finalization of the adoptive placement, a licensed physician or other licensed health professional shall make a medical examination to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(7)(9) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and

3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(8)(9)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;

2. Development; and

3. Needs.

(9)(40) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(10)(41)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;

2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

(11)(42) A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 20.[24-] Supervision of an Adoptive Placement of a Child Not in the Custody of the Cabinet. (1) For a child not in the custody of the cabinet, the child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility shall involve the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the

adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 21.[22-] Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and

(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of the child away from the child's family or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6. Date of adoptive placement;

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;

9. Child's adoptive name; and

10. Verification of preparation and orientation and annual training in accordance with Section 18[49] of this administrative regulation.

(3) If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall be:

(a) Maintained indefinitely following final placement of a child; and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes; and

(b) No other operational governing entity exists.

Section 22.[23-] Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in the home; or

(d) The home fails to meet requirements of this administrative regulation in:

1. Section 4(3)(h), (j), and (l) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections ~~5, 7, or 10~~5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home. An exception to this subparagraph shall be granted by the Division of Protection and Permanency director or designee for a foster parent caring for a child in the custody of the cabinet. If an exception is approved for a foster parent caring for a child in the custody of the cabinet, a new or additional child shall not be placed in the home until the foster parent has met the training requirement; and

4. Section ~~18(3)~~19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

(3) If closure of an approved foster or adoptive home is necessary, a child-placing agency shall:

(a) State the reason for the closure in a personal interview with the family unless the family refuses or declines the personal interview; and

(b) Document the reason in the foster or adoptive home's case record.

(4) A child-placing agency shall confirm the decision to close a home in a written notice to the foster or adoptive parent. The notice shall be provided within fourteen (14) calendar days of the interview with a foster or adoptive parent.

(5) The child-placing agency shall provide the foster or adoptive parent a written closure statement to include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

Section ~~23~~24: Foster Care Registry. (1) A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include ~~medically complex~~medically-fragile foster homes and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parent's:

1. Full name;

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) The date the foster home was approved; and

(d) Whether the foster home is active or inactive.

Section 24. Incorporation by Reference. (1) The "DPP-112B, Private Child- Placing Agency Placement Exception Request", 10/15, 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, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for child-placing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for child-placing agencies.

(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 standards of care and services for child-placing agencies.

(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 standards of care and services for child-placing agencies.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will facilitate the alignment of training requirements for foster or adoptive parents seeking initial and ongoing approval through private child-placing agencies and the Department for Community Based Services. A new administrative regulation has been proposed to provide consistency in training requirements for public and private agency placement providers for children in the custody of the cabinet. Another new administrative regulation has been established to distinguish standards for independent living programs through child-placing agencies. Updates were required to this administrative regulation for congruency. Additional revisions were made to this administrative regulation based upon comments received from public and private partners, best practices, and to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide consistent standards for public and private foster and adoptive homes and to make updates and clarifications recommended by public and private partners.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification and enhancement of existing standards of care and service for child-placing agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of statutes through its congruency with public agency training standards for foster and adoptive parents caring for children in an out of home care setting.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: According to the Office of Inspector General (retrieved 3/2/15), there are 133 licenses for child-placing agencies in Kentucky. There are 3,227 children in the custody of the cabinet who are placed in child-placing agency foster/adoptive homes as of March 1, 2015.

(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 facilitate the safe and timely placement of children and assist in the retention of foster and adoptive parents and respite care providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not incur a new or additional cost as a result of this regulatory amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities should benefit from enhanced clarity for child-placing agency standards provided within this administrative regulation.

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

(a) Initially: Any costs associated with the implementation of this administrative regulation will be within existing appropriations.

(b) On a continuing basis: Any ongoing costs associated with this administrative regulation 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 funds under Title IV-E of the Social Security Act and 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 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 fees or either directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 1355.34, 42 U.S.C. 671, 677

2. State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Parts 160, 164, 1355.34, 42 U.S.C. 671, 677

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 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), 199.640(5)(a), 605.150(1), 42 U.S.C. 671

(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 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:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency (Amendment)

922 KAR 1:350. Family preparation for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

RELATES TO: KRS 2.015, 61.870-61.884,~~[Chapter 151,]~~ 194A.060, 199.011~~[(7)],~~ 202A.011(12),~~[Chapter 214,]~~ 311.720(9), 311.840(3), 314.011(5), (7),~~[and]~~ (9), 600.020, 605.090, 610.110, 620.140(1)(d), 620.030, 620.050, 620.360, Chapter 625, 16 C.F.R. 1291-1220~~[1508 and 1509]~~, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 677~~[(a)(23)]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472 authorizes the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for public agency foster homes, adoptive homes, [resource homes] and respite care providers caring for foster or adoptive children.

Section 1. Definitions. (1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(2) "Applicant" means an individual or family~~[-]~~ subject to approval by the cabinet as a foster or adoptive~~[resource]~~ home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(6).

(4) "Child" is defined by KRS 199.011(4) and 600.020(8).

(5) "Child with medical complexity" means a child who has a

medical condition in accordance with Section 4(1)(b) of this administrative regulation.

(6)[(2)] "Commissioner" means commissioner of the Department for Community Based Services.

(7) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(9) and 600.020(28), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(8)[(3)] "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(9);

(b) Physician's assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse[practitioner] as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(9)[(4)] "Independent living services" means services provided to an eligible child[youth] to assist them in the transition from the dependency of childhood to living independently.

(10)[(5)] "Medically fragile child" means a child who has a medical condition as defined in Section 6(1)(b) of this administrative regulation.

(6) "Professional experience" means paid employment or volunteer work in a setting where there is supervision and periodic evaluation.

(7) "Resource home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 3(12) of this administrative regulation.

(8)] "Respite care" means temporary care provided by a provider, as specified in Section 17[24] of this administrative regulation, to[(a)] provide relief to the foster or adoptive[resource home] parents with the expectation of a child's return to the current foster or adoptive home[; or

(b) Allow for an adjustment period for the child in out-of-home care.

(9) "Specialized medically fragile child" means a child determined by the cabinet to have a medical condition, documented by a physician, that is severe enough to require placement with a resource home parent who is a:

(a) Health professional;

(b) Registered nurse as defined in KRS 314.011(5); or

(c) Licensed practical nurse as defined by KRS 314.011(9)].

Section 2.[Out-of-home Placement in a Resource Home Providing Only Foster Care Services. (1) Unless an exception is approved pursuant to subsection (2) of this section, the following requirements apply to resource homes providing only foster care services:

(a) No more than five (5) children, including children under the custodial control of the cabinet and the resource home parent's own children living at home, shall reside in a resource home that provides only foster care services;

(b) No more than two (2) children under age two (2), including children placed in out-of-home care by the cabinet and the resource home parent's own children, may reside at the same time in a resource home that provides only foster care services; and

(c) A medically fragile child shall be placed in an approved medically fragile home.

(2) To request an exception to subsection (1) of this section, the following forms shall be submitted to designated cabinet staff within ten (10) working days of placement:

(a) DPP-112A, Placement Exception Request; and

(b) DPP-112B, Placement Exception Plan, documenting the:

1. Reason the placement is in the best interest of the child; and

2. Specific support services to be provided.

(3) Cabinet staff shall inform the resource home parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

Section 3.] General Requirements for a Foster or Adoptive[Resource Home] Parent. (1)(a) Unless an exception is

approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a foster or adoptive parent[resource home] applicant shall be[;] at least twenty-one (21) years of age.

(b)[A resource home applicant shall show proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151.

(2) A foster or adoptive parent[resource home] applicant between eighteen (18) to twenty-one (21) years of age may be approved as a foster or adoptive[resource home] parent if:

1.[(a)] The foster or adoptive parent[resource home] applicant is related to the child under the custodial control of the cabinet;

2.[(b)] The foster or adoptive parent[resource home] applicant can meet the needs of the child; and

3.[(c)] Cabinet staff determines the placement is in the best interest of the child.

(2) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the[;]

(a) Department employee:

1. Had no relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625; or

2. Has adopted a sibling of the child available for adoption; and (b)] commissioner approves the employee to adopt.

(4) A department employee who provides protection and permanency services shall be prohibited from becoming a respite care provider or foster parent[resource home parent who provides foster care services or respite care] for a child in the care and custody of the cabinet, regardless of the child's residence, unless the:

(a) Department employee was a foster[resource home] parent or a respite care provider for the child when employment with the department began; and

(b) Commissioner approves the employee to be a respite care provider or foster[resource home] parent[who provides foster care services or respite care] for the child.

(5) A married couple may apply to become foster or adoptive[resource home] parents.

(6) A single, unmarried person may apply to become a foster or adoptive[resource home] parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents,[Resource Home] Applicants, or Adult Household Members, completed:

1. By a health professional who is not a member of the applicant's household, stating that the individual is free of a:

a. Communicable or infectious disease; and

b. Condition that presents a health or safety risk to a child placed in the applicant's home; and

2. As a part of:

a. The initial application; or

b. A foster or adoptive[resource] home review pursuant to Section 13[47] of this administrative regulation.

(b) Each foster or adoptive[resource home] parent applicant shall submit a DPP-107[current within one (1) year], completed by a health professional based upon health information within the past year, attesting to the parent applicant's:

1. General health, including that the applicant is free of communicable diseases; and

2. Medical ability to care for a child placed in the applicant's home.

(9) Each foster or adoptive[resource home] parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or[Resource Home] Applicants Regarding Dependent Children, for each child member of the applicant family.

(10) A foster or adoptive parent[resource home] applicant shall have a source of income:

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. Foster care reimbursement; or
 2. Adoption assistance.
 (11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive[resource-home] parent shall accept a child for foster care only from the cabinet.
 (12) An approved foster or adoptive[resource-home] parent shall be willing to:
 (a) Provide foster care services for a child placed in out-of-home care by the cabinet;
 (b) Adopt a child:
 1. Whose parent's parental rights have been terminated; and
 2. Who is under the custodial control of the cabinet;
 (c) Provide respite care for a child under the custodial control of the cabinet; or
 (d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.
 (13) A foster or adoptive[resource-home] applicant shall provide to the cabinet:
 (a) The names of three (3) personal references who:
 1. Are not related to the applicant; and
 2. a. Shall be interviewed by cabinet staff in person or by telephone; or
 b. Shall provide letters of reference for the applicant; and
 (b) Two (2) credit references.
 (14) Unless a documented exception exists and is approved by designated cabinet staff, adult children of the foster or adoptive parent[resource-home] applicant who do not live in the home shall be interviewed[contacted] by cabinet staff in person or by telephone regarding the applicant's parenting history.
 (15) If applicable, verification shall be obtained from the foster or adoptive parent[resource-home] applicant regarding:
 (a) Previous divorce;
 (b) Death of a spouse; and
 (c) Present marriage.
 (16) A foster or adoptive parent[resource-home] applicant who does not have custody of his or her own[biological] child shall provide:
 (a) A copy of the visitation order, if applicable;
 (b) A copy of the child support order; and
 (c) Proof of current payment of child support.
 (17) A foster or adoptive parent[resource-home] applicant and any member of the applicant's household shall submit to the background checks in accordance with 922 KAR 1:490.
 (18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.
 (19) For purposes of this administrative regulation, a child may include:
 (a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or
 (b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.

Section 3.4. Home Environment. (1)(a) ~~Following approval as a resource home,~~ The foster or adoptive parent shall ~~[resource home may]~~ request written approval from designated cabinet staff to provide services as a ~~[certified]~~:

(a) ~~Certified[1-]~~ provider of supports for community living in accordance with 907 KAR 1:145; ~~[or]~~
 (b) ~~Certified[2-]~~ family child care home in accordance with 922 KAR 2:100; ~~or~~
 (c) ~~Provider of child-care center services in accordance with 922 KAR 2:090.~~
 [(b) Except as provided in paragraph (a) of this subsection, an approved resource home shall not simultaneously:
 1. ~~Provide day care center services in accordance with 922 KAR 2:090; and~~
 2. ~~Be used as a licensed or certified health care or social service provider.]~~

(2) If the foster or adoptive home[resource-home] adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:
 (a) Hours of operation;

(b) Type of business; and
 (c) Clientele.
 (3) The foster or adoptive[resource-home] parent shall have access to:
 (a) Reliable transportation;
 (b) School;
 (c) Recreation;
 (d) Medical care; and
 (e) Community facilities.
 (4) A foster or adoptive[resource-home] parent who drives shall:
 (a) Possess a valid driver's license;
 (b) Possess proof of liability insurance; and
 (c) Abide by passenger restraint laws.
 (5)(a) No more than[Up to] four (4) children, including the foster or adoptive[resource-home] parent's own children, shall[may] share a bedroom, with thorough consideration given to each child's age, gender, and background.
 (b) Children of different genders over the age of five (5) shall not share a bedroom.
 (6) Each child shall have:
 (a) A separate bed that is age and size appropriate for the child; or
 (b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards 16 C.F.R. 1219-1220[1508 and 1509].
 (7) A child's mattress shall:
 (a) Meet current Consumer Products Safety Commission Standards;
 (b) Be in good repair; and
 (c) Have a clean tight-fitted sheet that shall be changed:
 1. Weekly; or
 2. Immediately if it is soiled or wet.
 (8) Except as approved by designated cabinet staff, a foster or adoptive[resource-home] parent shall not share a bedroom with a child under the custodial control of the cabinet.
 (9)[(8)] A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms[each bedroom] in the house.
 (10)[(9)] The physical condition of the foster or adoptive[resource] home shall:
 (a) Not present a hazard to the safety and health of a child;
 (b) Be well heated and ventilated;
 (c) Comply with state and local health requirements regarding water and sanitation[,including KRS Chapters 151 and 241]; and
 (d) Provide indoor and outdoor[out-of-door] recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home[resource-home].
 (11)[(40)] The following shall be inaccessible to a child:
 (a) Medication, unless an exception is granted pursuant to subsection (12) of this section;
 (b) Alcoholic beverage;
 (c) Poisonous or cleaning material;
 (d) Ammunition; and
 (e) Firearms in accordance with KRS 527.100 and 527.110.
 (12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:
 (a) 1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or
 2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and
 (b) Measures are taken to prevent unauthorized access by another child in the same home.
 (13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.
 (14)[(44)] A dangerous animal shall not be allowed near the child.
 (15)[(42)] Medication shall be kept in a locked container.
 (43) First aid supplies with unexpired dates shall be available and stored in a place easily accessible to an adult.
 (16)[(44)] A working telephone shall be available in the home.
 (17)[(45)] The home shall be equipped with a working smoke

alarm within ten (10) feet of each bedroom.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

~~[Section 5. Emergency Shelter Resource Home. (1) An applicant shall be approved as an emergency shelter resource home if the parent:~~

~~(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;~~

~~(b) Cares for a child in the custody of the cabinet age twelve (12) or above who needs immediate, unplanned care for fourteen (14) days or less, unless designated cabinet staff approve:~~

~~1. An exception to the minimum age for a child age eight (8) or over; or~~

~~2. An extension to the days of unplanned care, not to exceed a period of sixteen (16) days; and~~

~~(c) Completes ten (10) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the initial thirty (30) hours of family preparation as required by Section 9 of this administrative regulation.~~

~~(2) An approved emergency shelter resource home parent shall receive reapproval as an emergency shelter resource home if the parent completes ten (10) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet:~~

~~(a) Beyond the annual six (6) hour requirement specified in Section 15 of this administrative regulation; and~~

~~(b) Before the anniversary date of the original approval as a resource home.]~~

Section 4. Medically Complex Foster or Adoptive[6. Medically-fragile Resource]Home. (1) An applicant shall be approved by cabinet staff as a medically complex[medically-fragile resource] home if the foster or adoptive[resource-home] parent:

(a) Meets the requirements in Sections 2 and 3[and 4] of this administrative regulation, except for Section 2(10) which may be considered as an exclusion on a case-by-case basis by designated cabinet staff;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability[approved by cabinet staff as medically-fragile because of a:

1. Medical condition documented by a physician that may become unstable and change abruptly resulting in a life-threatening situation;

2. Chronic and progressive illness or medical condition;

3. Need for a special service or ongoing medical support; or

4. Health condition stable enough to be in a home setting only with monitoring by an attending:

a. Health professional;

b. Registered nurse as defined by KRS 314.011(5); or

c. Licensed practical nurse as defined by KRS 314.011(9);

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff;

(d)[Unless meets an exception in subsection (2) of this section] Completes training in accordance with 922 KAR 1:495, Section 4[:

1. A medically-fragile curriculum approved by the cabinet; or

2. An additional:

a. Twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet, beyond the family preparation as required by Section 9 of this administrative regulation, in the areas of:

(i) Growth and development;

(ii) Nutrition;

(iii) Medical disabilities; and

(iv) Cardiopulmonary resuscitation, "CPR", and first aid; or

b. Sixteen (16) hours of cabinet-sponsored training or training approved in advance by the cabinet, beyond the family preparation as required by Section 9 of this administrative regulation, if the resource parent holds a current certificate in cardiopulmonary resuscitation (CPR) and first aid];

(e) Receives training with documentation of completion from a health professional in how to care for the specific[medically-fragile] child with medical complexity who shall be placed in their care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2)[Professional experience related to the care of a medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section:

(a) Upon the approval of designated cabinet staff; and

(b) If the resource home parent is a:

1. Health professional;

2. Registered nurse as defined by KRS 314.011(5); or

3. Licensed practical nurse as defined by KRS 314.011(9).

(3) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 16 of this administrative regulation, no more than four (4) children, including the foster or adoptive[resource-home] parent's own children, shall reside in a medically complex foster or adoptive[medically-fragile resource] home.

(3)[(4)] Unless an exception is approved pursuant to Section 16(2)[2(2)] of this administrative regulation and a medically complex foster or adoptive[medically-fragile resource] home has daily support staff to meet the needs of a[medically-fragile] child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive[medically-fragile resource] home shall:

1. Not care for more than one (1)[medically-fragile] child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive[medically-fragile resource] home shall:

1. Not care for more than two (2)[medically-fragile] children with medical complexity; and

2. Demonstrate access to available support services.

(4)[(5)] Unless an exception pursuant to Section 16(2)[2(2)] of this administrative regulation is approved, a[medically-fragile] child with medical complexity shall be placed in an approved medically complex foster or adoptive[medically-fragile] home.

(5)[(6)] Unless the[resource] home is closed, pursuant to Section 14[48] of this administrative regulation, an approved medically complex foster or adoptive[medically-fragile resource home] parent shall receive annual reapproval by the cabinet as a medically complex[medically-fragile resource] home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4[prior to the anniversary date of the original approval as a resource home:

1. Twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet in the areas described in subsection (1)(d)2a of this section; or

2. Sixteen (16) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet, if the resource home parent maintains certification in CPR and first aid; and

(b) Continues to meet the requirements of this section.

(6)[(7)] An approved medically complex foster or adoptive[medically-fragile resource-home] parent shall cooperate in carrying out the child's health plan.

Section 5.[7:] Care Plus[Resource] Home. (1) An applicant shall be approved by cabinet staff as a care plus[resource-home] parent if the foster or adoptive[resource-home] parent:

(a) Meets the requirements of Sections 2 and 3[and 4] of this administrative regulation, except for Section 2(10) which may be considered as an exclusion on a case-by-case basis by designated cabinet staff;

(b) Cares for a child in the custody of the cabinet approved by cabinet staff as a care plus child because the child[who]:

1. Has a diagnosed[an] emotional or behavioral problem;
2. Is due to be released from a treatment facility;
3. Displays aggressive, destructive, or disruptive behavior;
4. Is at risk of being placed in a more restrictive setting;
5. Is at risk of institutionalization; or
6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6[and receives a certificate of completion for the twenty-four (24) hour care plus resource home training beyond the family preparation as required in Section 9 of this administrative regulation];

(e) Maintains a daily record of the care plus child's activities and behaviors; and

(f) Attends[all] case planning conferences.

(2) Unless an exception is approved pursuant to Section 16(2)[2(2)] of this administrative regulation and the care plus[resource] home parent can demonstrate access to available support services[has daily support staff to meet the needs of a child described in subsection (1)(b) of this section]:

(a) No more than four (4) children, including the foster or adoptive[resource home] parent's own children, shall reside in a care plus[resource] home[; and]

(b)[4;-] A one (1) parent care plus[resource] home shall[;-a.] not care for more than one (1) care plus child as described in subsection (1)(b) of this section[; and]

b. Demonstrate access to available support services; and

(c)[2;-] A two (2) parent care plus[resource] home shall[;-a.] not care for more than two (2) care plus children as described in subsection (1)(b) of this section[and], including the care plus foster or adoptive[resource home] parent's own children[child; and b. Demonstrate access to available support services].

(3) Unless the[resource] home is closed pursuant to Section 14[48] of this administrative regulation, an approved care plus foster or adoptive[resource home] parent shall receive annual reapproval by the cabinet as a care plus[resource] home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6[twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of the original approval as a resource home];[and]

(b) Submits to a review of the parent's:

1. Strengths and needs;
2. Records maintained on services provided to the child; and
3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

[4] Professional experience related to the care of a child described in subsection (1)(b) of this section may substitute for the training requirement specified in subsection (3)(a) of this section, if the care plus resource parent is a qualified mental health professional as defined by KRS 202A.011(12).

Section 8. Specialized Medically-fragile Resource Home. (1) An applicant shall be approved by cabinet staff as a specialized medically-fragile resource home if the applicant:

(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;

(b) Cares for a child in the custody of the cabinet approved by cabinet staff as a specialized medically-fragile child;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes:

1. A medically-fragile curriculum approved by the cabinet; or

2. An additional:

a. Twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the family preparation required in Section 9 of this administrative regulation, in the areas described in Section 6(1)(d)2a; or

b. Sixteen (16) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the family preparation required in Section 9 of this administrative regulation, if the resource home parent maintains certification in CPR and first aid;

(e) Receives individual documented training from a health professional or licensed practical nurse as defined by KRS 314.011(9) in how to care for the specific specialized medically-fragile child who shall be placed in the resource home;

(f) Maintains current certification in:

1. CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation, no more than four (4) children, including the resource home parent's own children, shall reside in a specialized medically-fragile resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and a specialized medically-fragile resource home has daily support staff to meet the needs of a medically-fragile child:

(a) A one (1) parent specialized medically-fragile resource home shall:

1. Not care for more than one (1) specialized medically-fragile child; and

2. Demonstrate access to available support services; and

(b) A two (2) parent specialized medically-fragile resource home shall:

1. Not care for more than two (2) specialized medically-fragile children; and

2. Demonstrate access to available support services.

(4) An approved specialized medically-fragile resource home parent shall receive annual reapproval as a specialized medically-fragile resource home if the parent:

(a) Annually completes, prior to the anniversary date of the original approval as a resource home:

1. Twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet in the areas described in Section 6(1)(d)2a of this administrative regulation; or

2. Sixteen (16) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet, if the resource home parent holds a current certificate in CPR and first aid; and

(b) Continues to meet the requirements of this section.

(5) Professional experience related to the care of a specialized medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section, upon the approval of designated cabinet staff if the resource home parent is a:

(a) Health professional;

(b) Registered nurse as defined by KRS 314.011(5); or

(c) Licensed practical nurse as defined by KRS 314.011(9).

(6) An approved specialized medically-fragile resource home parent shall cooperate with the cabinet in carrying out the child's health plan.]

Section 6.[9.] Preparation and Selection of a Foster or Adoptive[Resource] Home[Parent]. (1) The cabinet shall recruit a foster or adoptive[resource] home and approve the[resource] home prior to the placement of a child.

(2) Prior to approval as a foster or adoptive parent, an[A resource home] applicant shall complete training requirements in accordance with 922 KAR 1:495[a]:

(a) Minimum of thirty (30) hours of initial family preparation; and

(b) Curriculum approved by designated cabinet staff, including the following topics:

1. Orientation to the cabinet's resource home program;

2. An example of an actual experience from a resource home

parent who has fostered a child; and

3. Information regarding:

- a. The stages of grief;
- b. Identification of the behavior linked to each stage of grief;
- c. The long-term effect of separation and loss on a child;
- d. Permanency planning for a child, including independent living services;
- e. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment;
- f. Family functioning, values, and expectations of a foster home;
- g. Cultural competency;
- h. How a child comes into the care and custody of the cabinet, and the importance of achieving permanency;
- i. Types of maltreatment and experiences in foster care and adoption;
- j. The importance of birth family and culture and helping children leave foster care; and
- k. Identification of changes that may occur in the home if a placement occurs, to include:
 - (i) Family adjustment and disruption;
 - (ii) Identity issues;
 - (iii) Discipline issues and child behavior management; and
 - (iv) Specific requirements and responsibilities of a resource home parent.

(3) Except for a cabinet-approved individualized preparation program, family preparation for placement of a child under the custodial control of the cabinet shall be completed in a group setting by each adult who resides in the household and provides care].

(3) [(4)] If a new adult moves into an approved foster or adoptive[resource] home where a child is already placed by the cabinet, the child may remain and additional children may be placed[;] if the new adult:

- (a) Completes training in accordance with subsection (2) of this section within six (6) months of entering the home; and
- (b) Meets the requirements specified in Sections 2 and 3[and 4] of this administrative regulation.

(4) [(5)] An adult child or incapacitated[elderly] person who resides in the foster or adoptive[resource] home shall not be required to complete training in accordance with 922 KAR 1:495[family preparation] if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(5) [(6)] The cabinet shall not be obligated to grant foster or adoptive[resource] home approval or placement of a specific child to an individual or family that completes family preparation.

(6) [(7)] The purpose of family preparation shall be to:

- (a) Orient the applicant to the philosophy and process of the cabinet's family foster care or adoption programs;
- (b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;
- (c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet; and
- (d) Effect behavior so that an applicant may better fulfill the role as a resource home parent of a child.

(8) The family preparation process shall emphasize:

- (a) Self-evaluation;
- (b) Participation in small group exercises; and
- (c) Discussion with experienced resource home parents.

(9) In addition to completion of training in accordance with 922 KAR 1:495[the family preparation curriculum], at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant, to include:

- (a) Documentation that the requirements in Sections 2 and 3[and 4] of this administrative regulation have been met;
- (b) Documentation that a personal interview with each member of the applicant's household has been completed;
- (c) Discussion of the attitude of each member of the applicant's household toward placement of a child;
- (d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(7) [(10)] An applicant approved as a foster or adoptive parent or respite care provider by another state[;] or by a child-placing agency as described by KRS 199.011(7) shall:

(a) Meet the requirements provided within Sections 2 and 3 of this administrative regulation:

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive[resource home] parent;

(c) [(b)] Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive[resource home] parent, the other state, or the agency; and

(d) [(e)] Not be required to complete training in accordance with 922 KAR 1:495[the family preparation process] for approval as a Kentucky foster or adoptive[resource home] parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and
2. Obtain records and recommendation from the other state or child-placing agency.

(8) Following initial training as specified in 922 KAR 1:495, [(11)] if cabinet staff determines that an applicant or adult household member[described in subsection (4) or (10) of this section] lacks the necessary skills to become a foster or adoptive[resource home] parent, an individualized training[preparation] curriculum shall be developed to fulfill unmet training needs.

(9) [(12)] (a) A foster or adoptive[resource home] parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1)[Section 5(1)(c), 6(1)(d), 7(1)(d), or 8(1)(d) of this administrative regulation]; and

(b) Cabinet staff may recommend the foster or adoptive[resource home] parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1)[Section 5(1)(c), 6(1)(d), 7(1)(d), or 8(1)(d) of this administrative regulation] if the[resource home] parent possesses the aptitude to care for a child described in Section 4(1)(b) or 5(1)(b) of this administrative regulation[;]

1. Section 5(1)(b) of this administrative regulation;
2. 6(1)(b) of this administrative regulation;
3. 7(1)(b) of this administrative regulation; or
4. 8(1)(b) of this administrative regulation].

Section 7. [(10)] Completion of the Foster or Adoptive[Resource Home] Approval Process. (1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive[resource home] applicant if:

(a) The applicant provides written and signed information pertaining to family history and background;

(b) The applicant completes training requirements[family preparation] as required by 922 KAR 1:495[Section 9(2) of this administrative regulation];

(c) The information required in Section 2[(8)] [3(8)] through (10) and (13) through (17) of this administrative regulation has been obtained;

(d) Designated cabinet staff recommends approval; and

(e) The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive[resource] home requirements established in this administrative regulation; and
2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive[resource home] parent, the cabinet shall recommend that the applicant withdraw the request.

Section 8. [(11)] Denial of a Foster or Adoptive[Resource] Home Request. (1) Designated cabinet staff shall notify an applicant, in writing, if the request to become a foster or adoptive[resource home] parent is not recommended for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the request to become a foster or adoptive[resource home] parent after receiving

a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the ~~foster or adoptive~~[resource home] applicant disagrees with the cabinet's recommendation to not accept the applicant as a ~~foster or adoptive~~[resource] home, designated cabinet staff shall review the request to become a ~~foster or adoptive~~[resource home] parent and issue a final written determination regarding the cabinet's recommendation.

Section 9.[12.] Expectations of a Foster or Adoptive Home~~[Resource Homes Providing Foster Care Services]~~. A foster or adoptive home providing services for a child in the custody of the cabinet~~[resource home parent providing foster care services]~~ shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development~~[training]~~;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services[,] for a child age twelve (12) and older; and

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness~~[Medical condition, accident or death of a child placed by the cabinet]~~;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive~~[resource]~~ home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent~~[An absence]~~ without official leave;

(f)[A] Suicide attempt; or

(g) Criminal activity by the child requiring notification of law enforcement;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours~~[two (2) nights]~~; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive~~[resource]~~ home for more than twenty-four (24) hours~~[three (3) days]~~;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164[.] concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14)~~[ten (10)]~~ calendar days in advance of the home's intent to transfer to become~~[home~~

becoming] certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Arrange for respite care services in accordance with Section 10(5)[43(5)] of this administrative regulation;

(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b)[Annual] Physicals and examinations for the child;[and]

(18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;

(19) Comply with KRS 620.360(2); and

(20) Have appeal rights in accordance with 922 KAR 1:320.

Section 10.[13.] Reimbursements for Foster Homes~~[Resource Homes Providing Foster Care Services]~~. (1) Types of per diem reimbursement. The cabinet shall approve a foster~~[resource]~~ home as specified in Sections 2 and 3[and 4] of this administrative regulation and authorize a per diem reimbursement as established in this subsection~~[follows:]~~

(a) A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster~~[resource]~~ home; and

2. Made to the foster~~[resource]~~ home~~[parent]~~ that:

a. Does not meet criteria specified in paragraphs (b) through (j) of this subsection; and

b. Meets annual training requirements in accordance with 922 KAR 1:495, Section 3[required in Section 15(1)(a) of this administrative regulation].

(b) An advanced per diem reimbursement shall be:

1. Made to a foster~~[resource]~~ home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3(1)[who:

a. Has completed twenty-four (24) hours of advanced training, including training on child sexual abuse, beyond the family preparation, specified in Section 9(2) of this administrative regulation; and

b. Completes twelve (12) hours of ongoing cabinet-sponsored training or cabinet-approved training each year; and

2. Based on the age of the child placed by the cabinet~~[in the resource home]~~.

(c)[An emergency shelter per diem reimbursement shall:

1. Be made to a resource home parent who:

a. Meets criteria specified in Section 5 of this administrative regulation; and

b. Cares for a child, described in Section 5(1)(b) of this administrative regulation, who is placed by the cabinet; and

2. a Be reimbursed for no more than fourteen (14) days, unless an extension is granted in accordance with Section 5(1)(b)2 of this administrative regulation; or

b. After fourteen (14) days revert to:

(i) A basic per diem reimbursement, described in paragraph (a) of this subsection; or

(ii) An advanced per diem reimbursement, if the resource home foster parent meets training requirements specified in paragraph (b)1a and b of this subsection.

(d) A basic medically complex~~[medically-fragile]~~ per diem reimbursement shall be made to a foster~~[resource home]~~ parent who:

1. Meets criteria specified in Section 4[6] of this administrative regulation; and

2. Provides for the care of a medically-fragile child with medical complexity.

(d)[(e)] An advanced medically complex~~[medically-fragile]~~ per diem reimbursement shall be made to a foster~~[resource home]~~ parent who:

1. Meets criteria specified in Section 4[6] of this administrative regulation;

2. Has been approved for two (2) years as a foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3(1)[Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9)]; and

4.[3.] Provides for the care of a [medically-fragile] child with medical complexity.

(e)[(f)] A degreed medically complex[medically-fragile] per diem reimbursement shall be made to a foster[resource-home] parent who:

1. Meets criteria specified in Section 4[6] of this administrative regulation;and

2. Maintains a current license as a:

a. Registered nurse in accordance with KRS 314.011(5); or
b. health professional; and

3. Provides for the care of a [medically-fragile] child with medical complexity.

(f)[(g)] A basic care plus foster[resource] home per diem reimbursement shall be made to a foster[resource-home] parent who:

1. Meets criteria specified in Section 5[7] of this administrative regulation; and

2. Provides for the care of a child described in Section 5(1)(b)[7(1)(b)] of this administrative regulation.

(g)[(h)] An advanced care plus foster[resource] home per diem reimbursement shall be made to a foster[resource-home] parent who:

1. Meets criteria specified in Section 5[7] of this administrative regulation;

2. Has been approved for two (2) years as a foster or adoptive parent;

3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1)[Has one (1) year of experience as a care plus resource-home]; and

4.[3.] Provides for the care of a child described in Section 5(1)(b)[7(1)(b)] of this administrative regulation.

(h) A[(i)] An advanced specialized medically complex[medically-fragile] per diem reimbursement shall be made to a foster[resource-home] parent who:

1. Meets criteria specified in Section 4[8] of this administrative regulation; and

2.[Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and

3.Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition[specialized-medically-fragile child].

(i)[(j)] A degreed specialized medically complex[medically-fragile] per diem reimbursement shall be made to a foster[resource-home] parent who:

1. Maintains a current license as a health professional:

a. Licensed registered nurse in accordance with KRS 314.011(5); or

b. Physician in accordance with KRS 311.720(9);

2. Meets criteria specified in Section 4[8] of this administrative regulation; and

3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition[specialized-medically-fragile child].

(j)[(k)] Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved[resource] foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;
b. Food-related expenses;
c. Nonmedical transportation;
d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;

h. Sports, recreation, and school activities;

i. One (1) day of respite care per child per month; and

j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program ([K-CHIP]).

(b) Designated cabinet staff shall approve authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent[resource-home parent who provides foster care services].

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if[resource-home parent who provides foster care services]:

1. [(f)] A medical crisis affects the foster[resource-home] parent; or

2. The child care is appropriate to support the foster home or child[To allow for an adjustment period for the child].

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster[resource-home] parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in their care by the cabinet.

(4) Training. To the extent funds are available[and in accordance with Section 15(4) of this administrative regulation], the cabinet shall provide a reimbursement to an approved foster or adoptive home[resource-home that provides foster care services] for ongoing training expenses commensurate with the foster or adoptive[resource-home] parent's training needs, including:

(a) Mileage;

(b) Babysitting; and

(c) Tuition or fees up to the amount of:

1. \$100 per parent per year; or

2. \$200 per parent per year for a:

a. Medically complex foster or adoptive home; or

b. Care plus foster or adoptive home.

(5) Respite care.

(a) [Except for a child in an emergency shelter resource home,] Respite care shall be available for a child placed by the cabinet in a foster home[resource-home that provides foster care services].

(b) A foster home[resource-home that provides foster care services] shall be eligible for one (1) day of respite care per month per child.

(c) A foster[resource] home that cares for a child in the custody of the cabinet and meets criteria established in Sections 4 and 5[6 through 8] of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use[up] to fourteen (14) days[,] if designated cabinet staff document that the:

1. Foster[Resource-home] parent requires the additional respite care:

a. To stabilize the child's placement in the foster home[resource-home that provides foster care services]; or

b. Due to unforeseen circumstances that may occur, such as:

(i) Death in the family;

(ii) Surgery; or

(iii) Illness; or

2. Child placed in the foster[resource] home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 17[24] of this administrative regulation.

(6) Appeals. A foster or adoptive[resource home] parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 11.[14-] Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 7 of this administrative regulation[a home study as specified in 922 KAR 1:010, Section 7].

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884 and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

~~[Section 15. Annual Resource Home Training Requirement. (1) Before the anniversary date of the original approval as a resource home, a resource home parent shall be required to complete:~~

~~(a) At least six (6) hours of annual cabinet-sponsored training or training approved in advance by the cabinet; and~~

~~(b) Training necessary to obtain certifications required by Sections 6(1)(f) and 8(1)(f) of this administrative regulation shall count towards the annual training requirement.~~

~~(2) An individualized curriculum may be developed for a resource home parent who is unable to participate in annual group training because of employment or other circumstances.~~

~~(3)(a) Except for a resource home parent with whom a child has developed a significant emotional attachment and is approved by designated cabinet staff, the resource home whose parent fails to meet the annual training requirement shall be closed.~~

~~(b) Additional children shall not be placed in the home until the training requirement has been satisfactorily met.~~

~~(4) To the extent that funds are available, designated cabinet staff shall approve reimbursement for a resource home parent who has a child placed in their home under the custody and control of the cabinet and is participating in ongoing cabinet-sponsored or cabinet-approved training for the following expenses:~~

~~(a) Mileage;~~

~~(b) Babysitting; and~~

~~(c) Tuition or fees up to the amount of:~~

~~1. \$100 per family per year; or~~

~~2. \$200 per family per year for a:~~

~~a. Medically fragile resource home;~~

~~b. Specialized medically fragile resource home; or~~

~~c. Care plus resource home.~~

~~(5) Training hours required by Sections 6(6)(a), 7(3)(a), and 8(4)(a) of this administrative regulation may be used by the cabinet to reapprove the resource home for more than one (1) type of resource home.]~~

Section 12. Foster or Adoptive[16- Resource] Home Annual Reevaluation. (1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495.

(2)(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive[resource home] parent prior to or during[before] the month of the anniversary date of the initial[original] approval as a foster or adoptive[resource] home. The interviewer shall assess:

(a) Any change in the foster or adoptive[resource] home;

(b) The ability of the foster or adoptive[resource] home parent to meet the needs of a child placed in the home; and

(c) Continuing compliance with the requirements of Sections 2

and 3[and 4] of this administrative regulation.

(4) The cabinet staff person shall document requirements of subsection (3) of this section to include:

(a) A list of persons residing in or frequently in the home within the past twelve (12) months;

(b) A list of all foster children placed in the home within the past twelve (12) months and exit reasons for the children no longer in the home;

(c) Use of formal and informal support systems including:

1. Respite;

2. Extended family support; and

3. Friends or community partners;

(d) Description of parenting and discipline strategies;

(e) Changes in the physical environment including:

1. Address change; and

2. School district change;

(f) Discussion of stressors within the home to include:

1. Pregnancy or birth;

2. Physical or mental health conditions;

3. Employment changes;

4. Financial changes;

5. Death, grief, or loss;

6. Childhood trauma; and

7. Divorce or personal relationship changes;

(g) Alcohol or drug use and any substance abuse treatment;

(h) Functioning of relationships within the household;

(i) Assessment of the family's ability to meet the needs of the children placed in the home;

(j) List of foster or adoptive home reviews;

(k) Areas of concern or actions to be addressed that may exist within the household; and

(l) Placement recommendations[(2) The interviewer shall complete a DPP-1289, Annual Strengths/Needs Assessment for Resource Families, during the interview].

Section 13.[17-] Foster or Adoptive[Resource] Home Reviews.

(1) Upon notification of a factor that may place unusual stress on the foster or adoptive[resource] home or create a situation that may place a child at risk, cabinet staff shall:

(a) Immediately assess the health and safety risk of the child; and

(b) Complete a review of the foster or adoptive[resource] home within thirty (30) calendar days.

(2) Factors that shall result in a review of a foster or adoptive[resource] home shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that would impair a foster or adoptive[resource home] parent's ability to care for a child placed in the home by the cabinet;

(c) Change in marital status or home address;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Childbirth;

(f) Use of a form of punishment that includes:

1. Cruel, severe, or humiliating actions;

2. Corporal punishment inflicted in any manner;

3. Denial of food, clothing, or shelter;

4. Withholding implementation of the child's treatment plan;

5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and

6. Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that:

1. Is substantiated; or

2. Reveals concern relating to the health, safety, and well-being of the child;

(h) If the foster or adoptive[resource home] parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; or

(i) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being[well-being] of the child.

(3) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

- (c) Description of the situation that initiated the review;
- (d) An evaluation of the foster or adoptive[resource] home's family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive[resource] home.

Section 14.[14-] Closure of an Approved Foster or Adoptive[Resource] Home. (1) A foster or adoptive[resource] home shall be closed if:

- (a) Cabinet staff determines that the family does not meet the general requirements, as specified in Sections 2 and 3[and 4] of this administrative regulation, for a foster or adoptive[resource] home;
- (b) A situation exists that is not in the best interest of a child;
- (c) Sexual abuse or exploitation by the foster or adoptive[resource home] parent or by another resident of the household[resource home] is substantiated;
- (d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;
- (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive[resource home] parent; or
- (f) The cabinet has not placed a child in the home within the preceding two (2) year period.

(2) A foster or adoptive[resource] home may be closed according to the terms of the contract between the cabinet and the foster or adoptive[resource] home.

(3) If it is necessary to close an approved foster or adoptive[resource] home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

- (a) Confirm, in a written notice to the foster or adoptive[resource home] parent, the decision to close a home; and
- (b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days[. The notice shall be delivered within thirty (30) calendar days] of the interview with a foster or adoptive[resource home] parent.

(5) The written notice for closure of a foster or adoptive[resource] home shall include:

- (a) Notice that the cabinet shall not place a child in the home; and
- (b) The reason why the foster or adoptive[resource] home is being closed.

Section 15.[14-] Reapplication. (1) A former foster or adoptive[resource] home parent whose home was closed pursuant to Section 14(1)(a)[14(1)(a)] through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive[resource home] parent shall:

- (a) Attend an informational meeting; and
- (b) Submit the:
 1. Names of references specified in Section 2(13)[3(13)] of this administrative regulation; and
 2. Authorization for criminal records release specified in Section 2(17)[3(17)] of this administrative regulation.

(3) A reapplying former foster or adoptive[resource home] parent shall reenroll and complete training requirements[family preparation], as specified in Section 6[9] of this administrative regulation, unless:

(a) The former foster or adoptive[resource home] parent[:(a)] has previously completed training requirements[family preparation], as specified in Section 6(2)[9(2)] of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff which have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level[is considered a placement resource for children.

(4) An adoptive family may be reconsidered for adoptive placement pursuant to 922 KAR 1:100, Section 9].

Section 16.[20-] Placement Considerations[Resource Home Parent Adoption]. (1) Unless an exception is approved pursuant to subsection (2) of this section, the following requirements apply to foster homes:

(a) No more than five (5) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall reside in a foster home:

(b) No more than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall reside in a foster home; and

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception in accordance with criteria established within subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(4) A foster or adoptive[resource home] parent may adopt a child for whom parental rights have been terminated if:

(a) Foster or adoptive[Resource home] parent adoption is determined by cabinet staff to be in the best interest of the child;

(b) The child resides in the foster or adoptive[resource] home; and

(c) Criteria in 922 KAR 1:100 are met.

(5)[(2)] If a foster or adoptive[resource home] parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive[resource home] parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The foster or adoptive[resource home] parent's right to submit a request to the cabinet to reconsider the recommendation.

~~[(3) If a resource home parent is not approved for adoptive placement of a child currently placed in the home, cabinet staff shall meet with the resource home parent to explain the reason that the resource home parent adoption is not in the best interest of the foster child.]~~

Section 17.[24-] Requirements for Respite Care Providers. (1) A respite care provider shall:

(a) Be:

1. An approved foster or adoptive[resource] home; or
2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including information in accordance with:

1. KRS 605.090(1)(b); and

2. [a.] Section 4(1)(e)[6(1)(e)] through (g) of this administrative regulation, if the child is designated as medically complex[a medically fragile child]; or

b. Section 8(1)(e) through (g) of this administrative regulation, if the child is a specialized medically fragile child].

(2) If a foster or adoptive[resource home] parent chooses a respite care provider who is not an approved foster or adoptive[resource] home, the respite care provider shall:

(a)1. Meet criteria established in Sections 2(1)[3(4)], (2), (17), (18) and 3[4] of this administrative regulation if respite care is provided outside the home of the foster or adoptive[resource home] parent; or

2. Meet criteria established in Section 2(1)[3(4)], (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive[resource home] parent; and

(b)1. If providing respite care for a child described in Section 5(1)(b)[7(4)(b)] of this administrative regulation, have:

a. ~~Child-specific~~[Professional experience or] training in the mental health treatment of children or their families; or
b. A certificate of completion for twelve (12)~~[twenty-four (24)]~~ hours of care plus training specified in 922 KAR 1:495, Section 6(1)]~~[provided by the cabinet or approved in advance by the cabinet]; or~~

2. If providing respite care for a medically-fragile child with medical complexity or specialized medical complexity:

a. ~~(i)]~~ Meet training requirements in accordance with 922 KAR 1:495, Section 7;

b. Hold a current certificate in first aid;

c. Hold a current certificate in infant, child, and adult CPR; and

d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child~~[specified in Section 6 of this administrative regulation]; or~~

~~(ii) Be a health professional; and~~

b. Undergo health screenings as specified in Section 3(8) and (9) of this administrative regulation; or

3. ~~If providing respite care for a specialized medically-fragile child:~~

a. ~~Be a health professional; and~~

b. Undergo health screenings as specified in Section 3(8) and (9) of this administrative regulation].

(3) A respite care provider:

(a) May attend family preparation as specified in Section 6[9] of this administrative regulation; and

~~(b)[If the respite care provider is caring for a medically-fragile or specialized medically-fragile child, shall receive training to meet the specific needs of the child from a health professional or a resource home parent trained by a health professional in how to care for the child; and~~

~~(c)] Shall comply with Section 16[2] of this administrative regulation.~~

Section 18[22]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Foster or Adoptive Parents, ~~[Resource Home]~~ Applicants, or Adult Household Members", 10/15[edition 02/08];

(b) "DPP-108, Health Information Required for Foster or Adoptive Parents ~~or [Resource Home]~~ Applicants Regarding Dependent Children", 10/15[edition 02/08]; and

(c) "DPP-112A, DCBS Placement Exception Request", 10/15[edition 02/08];

~~(d) "DPP-112B, Placement Exception Plan, edition 02/08"; and~~

~~(e) "DPP-1289, Annual Strengths/Needs Assessment for Resource Families, edition 6/06".~~

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by providing for the specialized treatment of children according to their respective needs and characteristics and by establishing the process of determining an applicant's capacity for foster/adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administrative of the statutes by establishing criteria for foster parents, adoptive parents, and respite care 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 to this administrative regulation will facilitate the alignment of training requirements for foster or adoptive parents seeking initial and ongoing approval through private child-placing agencies and the Department for Community Based Services. A new administrative regulation has been proposed to provide consistency in training requirements for public and private agency placement providers for children in the custody of the cabinet. Updates were required to this administrative regulation for congruency. In addition, other changes were made based upon comments received from public and private partners, best practices, and in compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide consistent standards for public and private foster and adoptive homes and to make updates and clarifications recommended by public and private partners.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification and enhancement of existing criteria for publicly approved foster and adoptive parents and respite care providers.

(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 update of existing criteria for publicly approved foster and adoptive parents and respite care providers for clarity and through enhanced consistency with privately approved foster and adoptive parents who also care for children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The changes to this administrative regulation will affect applicants for foster or adoptive homes and respite care providers. Based upon April 2015 data, there are 2,004 publicly approved foster and adoptive homes.

(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 will facilitate the safe and timely placement of children and assist in the retention of foster or adoptive parents and respite care providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will not incur a new or additional cost as a result of this regulatory amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities should benefit through establishment of consistent training requirements for private and public agency foster and adoptive homes and other clarity provided through the amendment.

(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 federal and state funds under Title IV-E of the Social Security Act and 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 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 either 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.

(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 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 42 U.S.C. 671, 677

2. State compliance standards. KRS 194A.050(1), 199.472, 605.100(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Parts 160, 164, 42 U.S.C. 671, 677

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 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), 199.472; 605.100; 42 U.S.C. 671, 677

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.

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (New Administrative Regulation)

787 KAR 2:040. Local workforce development area governance.

RELATES TO: KRS 151B.020(6), 29 U.S.C. 3101 et seq.

STATUTORY AUTHORITY: KRS 151B.020(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. In addition to the minimum federal requirements set forth in 29 U.S.C. 3122, this administrative regulation provides further guidance and clarification necessary for effective local implementation activities.

Section 1. Local workforce development board membership criteria and operating guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification, Policy Number 15-001.

Section 2. Interlocal agreement. Each local elected official of a unit of general local government within a local workforce development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities, Policy Number 15-002.

Section 3. Partnership agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement, Policy Number 15-003.

Section 4. Identification of regions and designation of local workforce development areas. The process and procedures for the identification of regions and the designation of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with the Identification of Regions and Designation of Local Workforce Development Areas, Policy Number 15-004.

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

(a) The "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001, July 1, 2015;

(b) The "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002, March 4, 2015;

(c) The "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003, October 1, 2015; and

(d) The "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004, May 14, 2015.

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

THOMAS O. ZAWACKI, Secretary

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: May 21, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2015 at 11:00 a.m. at the offices of the Kentucky Department of Workforce Investment, 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2015, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2015. 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: Beth Kuhn, Commissioner; Kentucky Department of Workforce Investment; 500 Mero Street, 3rd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-0372, fax (502) 564-9990.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Kuhn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the membership criteria and operating guidelines of local workforce development boards, requires interlocal and partnership agreements for the local workforce development areas, and establishes the process for the identification of regions and designation of local workforce development areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3101 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes in that it provides guidance and clarification regarding local workforce development board membership criteria and operating guidelines and clarification of the roles and responsibilities of the chief local elected officials and the local elected officials with regards to the interlocal and partnership agreements implementing the WIOA. It also establishes the process for the identification of regions and the designation of local workforce development areas consistent with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the cabinet in implementing the WIOA and will help qualify for the continued receipt of federal funds.

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

(a) How the amendment will change this existing administrative

regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Office of the Governor, Kentucky Workforce Investment Board or its successor, local workforce development areas, along with their workforce development boards, chief local elected officials, and local elected officials, will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The chief local elected official in each local area will have to appoint members of the local boards in accordance with the "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001 and the local boards will have to operate in accordance with the policy. All local elected officials on behalf of their general unit of local government will have to enter into interlocal agreements that comply with the "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002. Each chief local elected official, representing the local elected officials, and the designated chair, representing the local workforce development board, will have to enter into a partnership agreement that complies with the "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003. The process and procedures for the identification of regions and the designation of local workforce development areas in Kentucky shall be in compliance with "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are minimal costs to the entities such as legal fees needed to draft the interlocal and partnership agreements and to implement in order to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local elected officials, chief local elected officials, and workforce development boards will have a clearer understanding of their roles and responsibilities under WIOA as a result of compliance with this administrative regulation.

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

(a) Initially: It is estimated the costs to the administrative bodies to implement this administrative regulation will be minimal initially. The costs may be covered by federal WIA funds solely allocated for WIOA transition activities.

(b) On a continuing basis: It is estimated the costs to the administrative bodies to implement this administrative regulation will be negligible 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 WIA funding is available for WIOA transition activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this 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 all chief local elected officials, local elected officials, local workforce development areas, and local workforce development boards will be impacted 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? Office of the Governor, Education and Workforce Development Cabinet, Kentucky Workforce Investment Board or its successor, Local Elected Officials, Chief Local Elected Officials, Local Workforce Development Boards, Local Workforce Development Areas

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.020(6) and 29 U.S.C. 3101 et seq.

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

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

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

(c) How much will it cost to administer this program for the first full year? Drafting the interlocal and partnership agreements and implementing will be a minimal expense to be covered by federal WIA funds allocated for WIOA transition activities.

(d) How much will it cost to administer this program for subsequent years? The costs will be negligible to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3122 and 3121, and Training and Employment Guidance Letter (TEGL) WIOA No. 27-14, TEGL 27-14, Change 1

2. State compliance standards. KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperated with other state and federal agencies for the proper administration of the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. The composition and functions of each local workforce development board and the activities of chief elected officials must be consistent with the minimum criteria set forth in 29 U.S.C. 3122. 29 U.S.C. 3121 and TEGL 27-14 mandate the policy for the designation of local workforce development areas by the Governor, in consultation with the State Board or its successor, by July 1, 2015.

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 additional requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements provide further guidance and clarification necessary for effective local implementation activities.

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:008. Procedure for adjustments of claims using Litigation Management Systems.

RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270, 342.300, 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written medical reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" or "ALJ" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "BRC" means Benefit Review Conference.

(4) "Civil rule" or "CR" means the Kentucky Rules of Civil Procedure.

(5) "Claim" means any claim including injury, hearing loss, or occupational disease.

(6) "Commissioner" is defined by KRS 342.0011(9).

(7) "Date of entry" means the date an order or opinion is filed.

(8) "Date of filing" means the date that a pleading, motion, or other document is filed with the commissioner at the Department of Workers' Claims in Frankfort, Kentucky.

(9) "Employer" means individuals, partnerships, voluntary associations, and corporations.

(10) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(11) "Litigation Management System" or "LMS" means the electronic filing system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

(12) "Local time" means the official time utilized in Kentucky at the time of filing and is limited to the Eastern and Central time zones.

(13) "Signature" means actual personal signatures, and incorporates electronic signatures which shall be treated as personal signatures for purposes of CR 11.

(14) "Special defenses" means defenses raised by special answer filed in accordance with Section 7(2)(d) of this administrative regulation.

Section 2. Date of Filing. (1) The date of filing shall be:

(a) For a paper pleading, motion, or other document transmitted by United States registered (not certified) or express mail, or by other recognized mail carrier, the date the transmitting agency receives the paper pleading, motion, or document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing;

(b) The following business day for a paper pleading, motion, or document delivered to the Department of Workers' Claims after the department is closed at 4:30 p.m., local time, or on the weekend; or

(c) The date an electronic pleading, motion, or document submitted by the Litigation Management System is filed with the commissioner at the Department of Workers' Claims in Frankfort, Kentucky.

1. An electronic pleading, motion, or document shall be considered filed on completion of filing.

2. The filing party shall receive an electronic notification of the

date and time of filing.

3. Electronic filings may be made through LMS only for the periods 6:00 a.m. (local time) through 10:00 p.m. (local time), Monday through Friday, and from 6:00 a.m. (local time) through 5:00 p.m. (local time) Saturday. All other times shall be reserved for system maintenance and LMS filings shall not be accepted during those times.

(2) Effective January 1, 2017, paper or written pleadings, motions, and documents shall not be accepted for filing.

(3) All pleadings, notices, orders, and other documents pertaining to a claim for workers' compensation benefits shall be filed utilizing only the LMS as of January 1, 2017.

(4) Filings may be made electronically utilizing LMS beginning March 1, 2016.

Section 3. Parties. (1) The injured party, or survivors, shall be designated as plaintiff. Adverse parties shall be designated as defendants.

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, he or she shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An ALJ shall order, upon a proper showing, a party be joined or dismissed.

(b) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 4. LMS filings. (1) Pleadings, motions, and documents filed electronically shall bear the electronic signature of the filer. The electronic signature shall constitute a signature for purposes of CR 11, for all other purposes of the Civil Rules, and any other purpose for a signature required by this administrative regulation.

(2) An electronic signature shall include, if applicable:

(a) A signature block containing the name, mailing address, phone number, fax number, and email address of the filer; and

(b) The name of the filer preceded by "/s/" typed on the space where signature otherwise would appear.

(3) Affidavits and exhibits to pleadings containing original handwritten signatures shall be scanned and filed electronically in PDF or PDF/A format.

(4) Documents which require the signatures of multiple persons may be filed electronically by:

(a) Indicating the consent of the non-filing party or person by inserting the typed signature of the person or party, preceded by "/s/" and followed by "by permission" (e.g. "/s/ Jane Doe by permission"); or

(b) Filing electronically a scanned document containing all signatures.

(5) The commissioner, an ALJ, board member, or designee of the commissioner may sign electronically any document requiring a signature. The electronic signature shall satisfy the requirements of CR 11, all other Kentucky Rules of Civil Procedure, or any other purpose required by this administrative regulation.

(6) A signature on any document required to be notarized, acknowledged, verified, or made under oath shall be handwritten and then scanned into LMS for electronic filing. The scanned document shall be the official record. The filing party shall retain the original executed document. The original executed document shall be produced if the validity or authenticity of the signature is challenged.

(7)(a) A non-filing signatory or party may challenge the validity or authenticity of an electronically filed document containing a non-attorney signature or multiple signatures by filing an objection within fourteen (14) days of service of the document. The filer of the document objected to shall bear the burden to prove validity or authenticity and shall respond to the objection within ten (10) days after service of the objection. Failure to respond shall result in the challenged document being stricken from the record.

(b) If the fourteen (14) day period has passed for filing a motion

to seek a ruling, the objecting party shall show good cause for the delayed challenge. If the motion to seek a ruling is granted, the filer shall bear the burden to prove authenticity and file a response within ten (10) days of the ALJ's ruling to allow a challenge. Failure to respond or to prove authenticity shall result in the filing being stricken from the record.

(8) Electronically filed documents shall be recorded as filed as of the local time where the document is transmitted. Filings made from time zones other than the Eastern and Central time zones shall be considered filed in the Central time zone.

Section 5. Pleadings. (1) An application for resolution of claim and all other pleadings shall be signed or electronically signed when using LMS, and submitted in accordance with this administrative regulation.

(a) For all claims, an applicant shall submit a completed Application for Resolution of Claim. If the claim involves a fatality, the applicant shall also submit a Form F within fifteen (15) days of the application.

(b) The applicant may include, if appropriate, a request for vocational rehabilitation, a request for mediation, interlocutory relief, or a request for imposition of a safety penalty pursuant to KRS 342.165. The applicant shall also designate whether an interpreter shall be required at the hearing, and shall specify the language and any specific dialect needed. A request for vocational rehabilitation benefits shall include a statement of why the relief is requested, and the basis of the request. If mediation is requested, the applicant shall designate whether a private mediator is to be used, or whether mediation services are requested to be provided by the DWC. A request for interlocutory relief shall provide the items set forth in Section 11 of this administrative regulation.

(2) The filing of an application and service through LMS shall satisfy all requirements for service pursuant to CR 5. All pleadings filed in the LMS shall be served upon all other parties electronically or by e-mail. If a party is represented, the pleading shall be served on that representative, at the party's or representative's last known e-mail address. A certificate of service indicating the date of service and electronically signed by the party shall appear on the face of the pleading. The party or its representative shall include his or her name, full address, phone number, and e-mail address. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served by e-mail upon the parties and shall not be filed with the commissioner.

(3) If filed outside of LMS, the requirements of this subsection shall apply.

(a) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail.

(b) The original of all pleadings shall be filed with the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. The parties, by agreement, may serve all pleadings upon each other by electronic means. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. The party or its representative shall include his or her name, full address, phone number, and e-mail address. Notices of deposition, notices of physical examination, requests for and responses to requests for production of documents, and exchange of reports or records shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an ALJ, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(5) All documents in an appeal to the board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

Section 6. Motions. (1) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply

to response) shall not be submitted.

(2) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(3) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(4) A response to a motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be filed within ten (10) days after the date of filing of a motion. The ALJ shall rule on the motion no later than ten (10) days after the date for the filing of the response has passed.

(5)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;

2. An affidavit or verification evidencing the grounds to support reopening;

3. A current medical report showing a change in disability established by objective medical findings;

4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed resolution sought to be reopened;

5. An affidavit or verification certifying a previous motion to reopen for permanent income benefits has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;

6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening. A designation of evidence made by a party shall list only those items of evidence from the original record relevant to the matters raised on reopening. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the ALJ to compare the relevant evidence existing in the original record with all subsequent evidence submitted by the parties. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought; or

7. A certification that the motion to reopen was served on all parties as well as the counsel who last represented the parties.

(b)1. Any response to the motion to reopen shall be filed within twenty (20) days of the filing of the motion to reopen.

2. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party relevant to matters raised in a response.

3. The ALJ shall rule on the motion no later than twenty (20) days after the date for the filing of the response has passed.

(6) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement, or agreed resolution upon which the fee request is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit or verification of counsel detailing the extent of the services rendered and the time expended;

2. A signed and dated attorney fee election form required by KRS 342.320(5), as submitted in accordance with Section 7(1)(f) of this administrative regulation; and

3. A copy of the signed and dated contingency fee contract, if requesting an attorney fee based upon recovery of income benefits on behalf of an employee, as submitted in accordance with Section 7(1)(g) of this administrative regulation.

(7) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit or verification of counsel detailing:

1. The extent of the services rendered and the time expended; and

2. The total amount to be charged.

(8) Vocational rehabilitation benefits may be requested in the initial claim filing, subsequently by motion, or ordered by the ALJ in his or her discretion.

(9) If a plaintiff dies subsequent to an award, a Motion to Substitute Party and Continue Benefits shall be filed.

Section 7. Application for Resolution of a Claim and Response.

(1) The applicant shall file an application for resolution of a claim. At the time of or within fifteen (15) days after the filing of the application, the following shall be filed:

(a) Work history, to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history, to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and all other medical providers or treatment facilities, where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part, or condition for which benefits are claimed;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury or condition which is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and

3. An opinion from a mental health professional establishing a mental impairment or disorder if a work-related psychological condition is claimed;

(e) Documentation establishing additional periods for which temporary total disability benefits are sought;

(f) The attorney fee election form;

(g) A copy of the contingency fee contract; and

(h) A completed Form SVC, with supporting documentation attached if a claimant has alleged the employer committed a safety violation pursuant to KRS 342.165.

(2)(a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a notice of filing and scheduling order for a BRC and hearing, to be conducted by an ALJ. Within forty-five (45) days of the date of the notice of filing and scheduling order for a benefit review conference, each defendant shall file a Notice of Claim Denial or Acceptance. However, no Notice of Claim Denial shall be required to be filed by any party in a claim reopened pursuant to KRS 342.125.

(b) If a Notice of Claim Denial or Acceptance is not filed, all allegations set forth in the application shall be deemed admitted.

(c) The Notice of Claim Denial or Acceptance shall set forth whether the claim is admitted, denied in whole, or denied in part.

(d) In the Notice of Claim Denial or Acceptance, a defendant shall, if appropriate, file a special answer to raise any special defenses designated in accordance with this paragraph. If a defendant raises a special defense under KRS 342.165, failure to comply with safety laws, defendant shall also submit a completed Form SVE with the special answer, and copies of any safety regulations or rules supporting the allegation.

1. A special answer shall be filed within:

a. Forty-five (45) days after the issuance of the order scheduling a benefit review conference and hearing;

b. Forty-five (45) days after the date of an order joining a defendant as a party, if joinder occurs after the filing of the application for the resolution of the claim; or

c. Ten (10) days of the discovery of facts supporting the defense upon a showing discovery could not have been made earlier in the exercise of due diligence.

2. A special defense shall be waived if not timely raised.

3. A special defense shall be pled if the defense arises under:

a. KRS 342.035(3), unreasonable failure to follow medical advice;

b. KRS 342.165, safety violation;

c. KRS 342.316(7) or 342.335, false statement on employment application;

d. KRS 342.395, voluntary rejection of KRS Chapter 342;

e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

f. KRS 342.710(5), refusal to accept rehabilitation services;

g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute; or

h. An allegation that the injury allegedly resulted from horseplay.

(e) Within sixty (60) days of the issuance of the notice of filing and scheduling order for a BRC and hearing, the parties shall file a notice of disclosure.

1. The notice of disclosure shall contain:

a. The names of all known witnesses upon whom the party intends to rely; and

b. A statement by plaintiff of wage information for all wages earned, if any, subsequent to the injury. The statement shall include any wages earned as of the date of service of the notice of disclosure while employed for any employer other than the one (1) for whom he or she was employed at the time of the injury. Plaintiff shall list the name of the employer, address, dates of any subsequent employment, the nature of the employment, and a description of the physical requirements of the subsequent employment.

2. Plaintiff shall also provide wage information for all wages earned for any concurrent employment for which he or she was engaged at the time of the injury on a Form AWW-CON.

3. All parties shall file a list of all known and anticipated contested issues. The list of contested issues shall be completed with specificity. Subsequent additional contested issues shall only be allowed upon motion to the ALJ establishing good cause as to why the issue could not have been listed earlier. Alleging an injury or occupational disease or listing a contested issue without reasonable ground shall constitute grounds for the imposition of sanctions under Section 25 of this administrative regulation.

4. Plaintiff shall disclose all known unpaid medical bills to the parties, including travel for medical treatment, co-pays, or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or reimbursement. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.

5. Defendant shall provide with its notice of disclosure a completed Form AWW-1, average weekly wage certification, an itemization of any medical bills or medical expenses known to be disputed by defendant, any submitted bills being considered but unpaid, and a total for all medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed. If the plaintiff has earned wages for defendant after the injury which are the subject of the litigation, defendant shall provide post-injury wage information on a Form AWW-POST. In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a finding establishing the average weekly wage in a previous decision or if the pre-injury average weekly wage was previously stipulated by the parties unless a party seeks and is relieved from the original stipulation.

6. Within forty-five (45) days of the date of the order joining a new party, the newly joined party shall file a notice of disclosure in accordance with the requirements of this paragraph. A medical provider joined because treatment or bills have been contested shall not be required to file a disclosure under this paragraph.

7. All parties shall amend the notice of disclosure within ten (10) days after identification of any additional witness, or receipt of information or documents which should have been disclosed had it then been known or available at the time of the original filing. Failure to comply shall result in the exclusion of the witness or documents.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date the application is filed.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the issuance by the commissioner of the notice of filing and order scheduling the BRC and hearing.

(b) After the sixty (60) day period, defendants may take proof for an additional sixty (60) days.

(c) After the defendant's sixty (60) day period, the plaintiff may take rebuttal proof for an additional thirty (30) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, other public records and surveillance reports or videos, or recorded statements shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an ALJ. Upon request, plaintiff shall provide each defendant with a fully executed Social Security Release Form, Form 115, or a fully executed release to provide the full information from which any documents listed in this subsection are filed. Failure to comply with this section may constitute grounds for exclusion of the reports or records as evidence and shall constitute grounds for the imposition of sanctions pursuant to Section 25 of this administrative regulation.

(4) More than two (2) medical reports filed with the application for resolution of claim shall not be admitted into evidence without further order if:

(a) No objection is filed prior to or with the filing of the Notice of the Claim Acceptance or Denial; and

(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) One (1) vocational report may be filed by a party by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if no objection is filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and

(b) State the grounds for the objection with particularity.

(5) The filing party shall be granted ten (10) days to respond to any objection to the filing of the report.

(6) The ALJ shall rule on the objection no later than ten (10) days after the time to respond has passed.

(7) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense. Notice of time, date, and place for cross-examination shall be given within fifteen (15) days of the date the evidence to be cross-examined is served on the cross-examining party.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted through the LMS utilizing the appropriate form, except an ALJ may permit the introduction of other reports which substantially comply with the requirements set forth above, which are not in excess of twenty-five (25) pages.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or verification from the submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physician's index number and a listing of his or her medical specialty in lieu of attaching qualifications.

(5) Narratives in medical records or reports shall be typewritten

or clearly legible. Other portions, including spirometric tracings, shall be clearly legible.

(6) Notices of filing or motions to file medical reports shall list the impairment rating assigned in the medical report or record in the body of the notice or motion.

(7)(a) Medical evidence may be introduced by deposition, medical report, or compliant medical records as set forth below which shall be admitted into evidence without further order if an objection is not filed.

(b) An objection to the filing of a medical report or records shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The ALJ shall rule on the objection no later than ten (10) days after the time to respond has passed.

(8) Medical records which are not submitted on the appropriate form, or format designated by the commissioner, may be submitted by notice which identifies the records, the person or medical facility which produced the records, and the relevance of the records to the claim. Records submitted in excess of ten (10) pages shall be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page. Failure to comply with pagination and table of contents shall result in rejection of the records which shall not be filed or considered as evidence.

(9) If a medical report or medical record is admitted as direct testimony, an adverse party may depose the reporting or treating physician in a timely manner as if on cross-examination at its own expense, subject to the proof time limitations set forth above. Notice of the time, date, and place for cross-examination shall be given within fifteen (15) days of the date the evidence is filed.

Section 11. Medical Evaluations Pursuant to KRS 342.315 or KRS 342.316. (1) All persons claiming benefits for hearing loss or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools, or other facility designated by the commissioner.

(2) An ALJ may direct appointment by the commissioner of an evaluator pursuant to subsection (1) of this section.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical treatment records and diagnostic studies to the ALJ or the commissioner for determination of relevancy and submission to the evaluator. The ALJ or commissioner shall provide notice to the parties of the material submitted to the medical evaluator. This additional information shall not be considered filed of record. The information shall be submitted to the medical scheduler at the Department of Workers' Claims within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315, and shall be in chronological order and provided to all other parties within ten (10) days following receipt of the medical information. A party shall not send records or propound questions directly to the medical evaluator.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties. The employer, carrier, or Uninsured Employers' Fund shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The ALJ shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, forfeiture of benefits during the period in which the plaintiff fails to attend, payment of a no-show fee, sanctions, or all of the items listed in this subsection.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation or to pay the cost of the examination within thirty (30) days of the receipt of a statement for the evaluation shall be grounds for imposition of sanctions pursuant to Section 25 of

this administrative regulation, KRS 342.310, or as an unfair claims settlement practice.

Section 12. Interlocutory Relief. (1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

(2) If interlocutory relief is requested prior to or at the time the application for resolution of claim is filed, the commissioner shall issue an order allowing the responding party twenty (20) days to respond to the request.

(3)(a) Upon receipt of a response to request for interlocutory relief, the commissioner shall assign the claim to an ALJ for resolution of the request for interlocutory relief.

(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty-five (35) days of the order assigning the claim for resolution.

(c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20) days after the date of the hearing.

(4) If no hearing for interlocutory relief is held, the ALJ shall issue a decision within twenty (20) days after the date the response is due, or twenty (20) days after the date the response is filed.

(5) If the request for interlocutory relief is denied, the claim shall be referred to the commissioner for assignment of the claim for resolution by an ALJ.

(6) If the request for interlocutory relief is granted, the claim shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Failure to provide status reports shall be grounds for termination of interlocutory relief. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. The order terminating interlocutory relief shall also contain a provision for referral to the commissioner for assignment of the claim for resolution by an ALJ.

(7) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, the ALJ shall within ten (10) days issue an order:

(a) Requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief; and

(b) If necessary, setting a hearing within thirty-five (35) days of the order. The hearing may be held electronically if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person. The hearing may be waived by agreement.

(8)(a) Upon completion of the hearing, an ALJ shall issue a decision within twenty (20) days; or

(b) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days after the date of agreed waiver.

(9) Entitlement to interlocutory relief shall be established by affidavit, deposition, hearing testimony, or other means of record demonstrating the requesting party:

(a) Is eligible under KRS Chapter 342;

(b) Shall suffer immediate and irreparable injury, loss, or damage pending a final decision on the application; and

(c) Is likely to succeed on the merits based upon the evidence introduced by the parties.

(10) Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services shall substantially increase the probability that the plaintiff shall return to work.

(11) If interlocutory relief is awarded in the form of income benefits, the claim shall be placed into abeyance unless a party shows irreparable harm shall result. Plaintiff shall file reports every sixty (60) days, or sooner if circumstances warrant, or upon order by the administrative law judge, updating his or her current status. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and

the claim removed from abeyance. Failure to file a timely status report shall constitute cause to terminate interlocutory relief.

(12) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act, and for sanctions pursuant to Section 26 of this administrative regulation.

(13) If a claimant is successful in the request for interlocutory relief and, if payment of benefits pursuant to the interlocutory relief order results in an overpayment of benefits, the party making the overpayment shall be entitled to a dollar for dollar credit for the overpayment against past due or future awarded income benefits.

(14) If interlocutory relief is requested in the application for benefits, an assignment to an ALJ shall not be made on other issues and a scheduling order shall not be issued until a ruling has been made on the interlocutory relief request, unless the requesting party shows that delay shall result in irreparable harm.

(15) An attorney's fee in the amounts authorized by KRS 342.320 may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney. Any attorney fee awarded for interlocutory relief may result in a reduction of any attorney fee awarded at the conclusion of the claim.

Section 13. Benefit Review Conferences. (1) The purpose of BRC shall be to expedite the processing of the claim and narrow the contested issues.

(2) The BRC shall be an informal proceeding.

(3) The date, time, and place for the BRC shall be stated in the order issued by the commissioner scheduling the BRC and hearing.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the BRC.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier, third party administrator, or qualified self-insured with settlement authority shall be present or available by telephone during the BRC.

(6) The ALJ may upon motion waive the plaintiff's attendance at the BRC for good cause shown.

(7) A transcript of the BRC shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the BRC.

(9)(a) The plaintiff shall bring copies of additional known unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments not previously disclosed. Failure to do so may constitute a waiver to claim payment for those bills or expenses absent a showing of good cause as to why the bills or out-of-pocket expenses could not be produced at or before the benefit review conference.

(b) Each defendant shall bring copies of disputed medical bills presented to them, their insurer or their representative known to be unpaid by them and any other disputed medical expenses including travel expenses, if not previously provided. Failure to do so may constitute a waiver of the right to challenge those bills or expenses.

(10) At or prior to the benefit review conference, the parties shall:

(a) Attempt to resolve controversies and disputed issues;

(b) Narrow and define disputed issues; and

(c) Provide written stipulations.

(11) A party seeking postponement of a BRC shall file a motion no later than forty-five (45) days after the issuance of the notice by the commissioner scheduling the BRC and hearing, and shall demonstrate good cause for the postponement.

(12) If, at the conclusion of the BRC, the parties have not reached agreement on all the issues, the ALJ shall prepare a final BRC memorandum and order including stipulations and identification of all issues which shall be signed by the parties or if represented, their counsel, and the ALJ.

(13) Only contested issues shall be the subject of further

proceedings.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an ALJ except as provided by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of educational, Office of Vital Statistics, Armed Forces, Social Security, other public records, and limited hospital records to include emergency room records, history, physical and discharge summary, operative notes, and reports of specialized testing. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge unless specifically noticed by a party for consideration as medical opinion and as limited by KRS 342.033 and this administrative regulation. If the records or reports submitted exceed twenty (20) pages, the records or reports shall be paginated or Bates stamped consecutively and indexed with a table of contents generally identifying the contents of each page. If the records are filed by plaintiff, an appropriate executed release shall be included to enable defendants to obtain complete copies of the records.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances preventing timely introduction, that reasonable effort was made by the party to obtain the evidence in a timely manner, and the significance of the evidence to the issues in the claim.

(2) A motion for extension of time shall be filed no later than fifteen (15) days prior to the expiration of proof time to be extended unless good cause is shown as to why it could not have been filed earlier.

(3) The motion for extension of time or affidavit shall set forth good cause.

(4) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a defendant; or

2. Defendants if an extension is granted to a Plaintiff; and

3. Extend the time of the adverse party automatically unless the extension is for rebuttal proof;

(b) Be limited to the introduction of the evidence cited as the basis for the requested extension of time; and

(c) Be limited to one (1) extension of time for each party.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 25 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered good cause in the absence of due diligence.

(2) Upon good cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except that:

(a) Civil Rules 27, 33, and 36 shall not apply to practice before the ALJs or the Workers' Compensation Board; and

(b) A Response to a Request for Production shall not be filed with the DWC.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness when the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Opposing parties may participate in the deposition either at

the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) A party seeking a subpoena from an ALJ shall provide to the ALJ to whom the case is assigned, or if no assignment has been made, to the chief administrative law judge, a subpoena or subpoena duces tecum. This shall be done a minimum of ten (10) days prior to the date of the appearance being requested. A motion shall not be filed. A subpoena shall be served in accordance with Civil Rules 5.02, 45.03 or 45.05, whichever is applicable.

(4) The commissioner shall establish a medical qualifications index.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

(d) A party may inquire further into the qualifications of a physician.

(e) If the physician's qualifications have not previously been filed into the index maintained by the commissioner, and an index number issued, the filing party shall provide sufficient information containing the physician's qualifications, and request the physician be included in the index and a number issued.

Section 18. Informal Conference. No less than fifteen (15) days prior to the date of the hearing, the ALJ may conduct an informal conference either at a hearing site, telephonically, or by other electronic means to inquire regarding remaining contested issues, and who shall testify at the hearing.

Section 19. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the ALJ may hold oral arguments, or order briefs submitted at his or her discretion. The claim shall be considered submitted immediately.

(3) Briefs shall not exceed fifteen (15) pages in length. Permission to increase the length of a brief shall be sought by motion. A reply brief shall not be filed unless specifically allowed by an ALJ.

(4) A decision shall be rendered no later than sixty (60) days following the hearing.

(5) The parties with approval of the ALJ may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the ALJ. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

(6) The time for filing a petition for reconsideration or notice of appeal shall not begin to run until after the date of filing of the written opinion.

(7) An opinion or other final order of an ALJ shall not be deemed filed until the ALJ notice of issuance is entered into LMS or if mailed by certificate of service from the Office of the ALJ or Department of Workers Claims to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) If the parties settle a claim prior to the hearing, the ALJ shall be notified as soon as practicable. If the parties fail to notify the ALJ of the need to cancel a hearing for any reason less than two (2) full business days before the date of the scheduled hearing, the parties shall pay their proportionate share of the court reporter appearance fee established by the commissioner, and, if applicable, the appearance fee for an interpreter obtained for the hearing by the DWC, also established by the commissioner.

Section 20. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the date of filing of a final order or award of an administrative law judge, clearly stating the patent error which the

petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The ALJ shall act upon the petition within ten (10) days after the response is due.

Section 21. Agreements. (1) Unless the settlement agreement is completed and tendered to the ALJ for immediate approval at the BRC, informal conference, or hearing, the party drafting the settlement agreement shall provide the signed original to the adverse party no later than twenty-one (21) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the ALJ for approval no more than thirty (30) days after the date the parties agreed to settle.

(2) Once a settlement agreement has been approved by the ALJ, payment shall be made within twenty-one (21) days after the date of the order approving settlement.

(3) Failure to satisfy the time requirements in this section unless solely the fault of the claimant or claimant's counsel may result in the addition of eighteen (18) percent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the time prescribed in subsection (2) of this section.

(4) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

(5) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed in this subsection and the form shall reflect the original signature of the parties:

(a) Form 110-F, Agreement as to Compensation and Order Approving Settlement- Fatality; or

(b) Form 110, Agreement as to Compensation and Order Approving Settlement.

(6) A settlement agreement submitted for approval that contains information or agreements that are outside the provisions and purview of KRS Chapter 342 shall not be approved and shall be returned to the parties.

Section 22. Review of Administrative Law Judge Decisions. (1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board for any documents or pleadings physically filed.

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by the award, order, or decision may electronically file a notice of appeal to the board, with service upon all other parties pursuant to Section 3 of this administrative regulation.

(b) As used in this section, a final award, order, or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. Denote all parties against whom the appeal is taken as respondents;

3. Name the ALJ who rendered the award, order, or decision appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent;

5. Include the claim number; and

6. State the date of the final award, order, or decision appealed.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(f) The commissioner shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(3) Format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) The petitioner's brief shall be filed with the commissioner of the DWC.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the manner established in this subsection.

(a)1. The name of each petitioner and each respondent shall be included in the brief.

2. The petitioner shall specifically designate as respondents all adverse parties.

3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.

(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.

(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petitioner's brief shall include a statement of the "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.

(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief for review shall be as established in this paragraph.

1. A brief "Introduction" shall indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he or she relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:

a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

b. Copies of prior board opinions in accordance with subsection (10) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.

(a) Each respondent shall file an original brief, combined brief if cross-petitioner or cross-petitioner's brief with service upon the other parties against whom the claim is being appealed, within thirty (30) days of the date on which the petitioner's brief was filed with the commissioner of the DWC.

(b) The respondent's brief shall include a statement of the "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be electronically signed by each party or the party's counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith. If the brief is not filed through LMS, it shall bear an original signature of each party or counsel with a written certification that the statements contained in the document are true and made in good faith. The filer of the brief shall certify that service has been made upon opposing parties with identification of the manner of service.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the commissioner of the DWC, a party shall serve, in the manner provided by Civil Rule 5.02(2) or electronically as set forth in this administrative regulation, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the board shall bear, on the front cover, an original signature or if filed through LMS an electronically signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the board shall include a current address, telephone number, and e-mail address following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Any motion for extension of time to file a brief shall be filed not later than five (5) days prior to the date the brief is due.

(10) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) All citations of Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Citations for prior decisions of the board shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(11) Number of pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages, in totality, inclusive of those items required by this section. The appendix shall not count against the page limit.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages in totality, inclusive of those items required by this section. The

appendix shall not count against the page limit.

(d) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation, failure of a party to timely file a response, or failure to obtain prior permission to increase the length of a brief may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization, content, or length with leave to refile in proper form;

(c) Striking of an untimely response;

(d) A fine of not more than \$500; or

(e) Dismissal.

(13) Motions.

(a) The original of a motion or pleading shall be filed, in accordance with Section 4 of this administrative regulation, with the commissioner of the DWC, and shall bear the designation of Appeals Branch, or Workers' Compensation Board.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Motions or pleadings shall be filed in accordance with Sections 4, 5, or 6 of this administrative regulation.

(g) A motion to extend the time in which to file a brief or other pleading in an appeal shall be filed at least five (5) days prior to the date sought to be extended.

(h) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(i) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(14) Oral arguments.

(a) Upon motion of a party or in its own discretion, the board may order an oral argument on the merits in a case appealed from a decision, award, or order of an ALJ.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(15) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of:

a. Financial loss;

b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. There exists a reasonable likelihood that the moving party shall prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(16) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(18) If the parties agree to settle a claim while it is on appeal to the board, the original agreement, along with a motion to place the appeal in abeyance and to remand to the ALJ shall be filed. Action shall not be taken by an ALJ until an order is issued by the board holding the appeal in abeyance, and remanding the claim to the ALJ for approval of the settlement agreement. Once the settlement agreement is approved, the appeal shall be removed from abeyance and dismissed if all issues on appeal have been resolved.

Section 23. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the ALJ and all parties by service of a certification of no coverage.

Section 24. Withdrawal of Records. (1) A portion of any original record of the DWC shall not be withdrawn except upon an order of the commissioner or an ALJ.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 25. Time for Payment of Benefits in Litigated claims. (1) If a disputed claim is litigated and an opinion, order, or award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the opinion, order, or award:

(a) All past benefits due under the award with appropriate

interest shall be paid no later than twenty-one (21) days after expiration of the last appeal date; and

(b) Any attorney fee shall be paid no later than thirty (30) days after the date of the administrative law judge's order approving the fee.

(2) If an appeal is taken from an opinion, order, or award awarding benefits to a claimant, any benefits shall be paid no later than twenty-one (21) days after the decision becomes final and no further appeal can be taken. Any attorney fee shall be paid no later than thirty (30) days after the decision becomes final, or the date of the ALJ's order approving the fee, whichever is later.

Section 26. Sanctions. (1) Pursuant to KRS 342.310, an ALJ or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an ALJ that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Workers' Compensation Funds or Coal Workers' Pneumoconiosis Fund.

Section 28. Forms. The DWC shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall not be filed and shall be returned to the applicant or person submitting the form.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 106, "Medical Waiver and Consent", January 1, 2016;

(b) Form 109, "Attorney Fee Election", January 1, 2016;

(c) Form 110, "Agreement as to Compensation and Order Approving Settlement", January 1, 2016;

(d) Form 110-F, "Agreement as to Compensation and Order Approving Settlement – Fatality", January 1, 2016;

(e) Form 115, "Social Security Release form", January 1, 2016;

(f) Form F, "Fatality", January 1, 2016;

(g) Form AAW-1, "Average Weekly Wage Certification", January 1, 2016;

(h) Form AWW-CON, "Average Weekly Wage Certification-Concurrent", January 1, 2016;

(i) Form AWW-POST, "Average Weekly Wage Certification-Post Injury", January 1, 2016;

(j) Form SVC, "Safety Violation Alleged by Plaintiff/Employee", January 1, 2016; and

(k) Form SVE, "Safety Violation Alleged by Defendant/Employer", January 1, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 28, 2015, at 1:30 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing shall 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 Friday, July 31, 2015. 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: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the adjustment and practice of claims for workers' compensation using the newly established Litigation Management System (LMS).

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1) and KRS 342.285(1), the commissioner is required to promulgate administrative regulations necessary to carry on the work of the administrative law judges and the Workers' Compensation Board. The new administrative regulation establishes the procedures utilizing the electronic filing, or LMS. It replaces 803 KAR 25:010, which is being repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes an orderly procedure for the Department of Workers' Claims' administrative law judges and the Workers' Compensation Board to carry on the adjudication of workers' compensation claims and appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation is necessary for the orderly and prompt resolution and adjudication of workers' compensation claims and appeals. All parties to a workers' compensation claim should be afforded a process and procedure for prompt, orderly and fair resolution and adjudication. The Litigation Management System will allow for the prompt filing of legal documents without the filing of paper.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative

regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amended administrative regulation affects all injured workers, those afflicted with an occupational disease, and employers, including governmental entities subject to the Workers' Compensation Act, all physicians and medical providers providing services to injured workers, workers with occupational diseases, insurance carriers, self-insured employers, self-insured groups, third-party administrators, and their attorneys.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those regulated entities identified in question (3) will have to familiarize themselves with the amended procedure and resolve or adjudicate workers' compensation claims in accordance with the administrative regulation. This includes the usage of computers for electronic filing of documents required by the Litigation Management System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amended administrative regulation will be available for no additional cost through the web site of the Legislative Research Commission. Thus, there should be no additional cost for access to the administrative regulation. It is anticipated that increased adjudicatory efficiencies will reduce overall litigation costs for the identified entities, as there will be a drastic reduction in paper usage and postage expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified entities will receive prompt, fair and orderly resolution and adjudication of workers' compensation claims and disputes, which should be faster due to the electronic filing of documents.

(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 continuing costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal operating budget is the source of funding.

(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 be no increase in fees or 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 amended administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amended procedure applies equally to all 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? All parts of government with employees subject to KRS Chapter 342 are impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260(1) and KRS 342.285(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. As

an employer, there may be some minimal initial increased costs for implementation; however, it is anticipated that costs subsequently will be lowered.

(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 is expected to be generated.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET
Department of Workers' Claims
(Repealer)

803 KAR 25:013. Repeal of 803 KAR 25:009 and 803 KAR 25:010.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1), KRS 342.316(3)(a), KRS 342.732(5), KRS 342.792

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. KRS 342.316(3)(a) requires the commissioner to prescribe the format of the medical report required for claim resolution. KRS 342.732(5) requires the commissioner to promulgate an administrative regulation relating to retraining incentive benefits for coal workers' pneumoconiosis. KRS 342.792 requires the commissioner to promulgate regulations to obtain and forward chest x-rays for the consensus process under KRS 342.316. This administrative regulation repeals 803 KAR 25:009 and 803 KAR 25:010, as those administrative regulations are no longer needed because the consensus process under KRS 342.732 and KRS 342.316 was ruled unconstitutional for coal workers' pneumoconiosis claims and the procedures for injury and all other claims are to convert to an electronic Litigation Management System ("LMS"), which will be governed by 803 KAR 25:008.

Section 1. The following administrative regulations are hereby repealed:

(1) 803 KAR 25:009, Procedure for adjustment of coal workers' pneumoconiosis claims; and

(2) 803 KAR 25:010, Procedure for adjustment of claims.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, July 28, 2015, at 1:30 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, July 31, 2015. 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: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles E. Lowther

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals:

(1) 803 KAR 25:009, Procedure of adjustment of coal workers' pneumoconiosis claims; and

(2) 803 KAR 25:010, Procedure for adjustment of claims.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.270(3), KRS 342.033, KRS 342.285(1), KRS 342.316(3)(a), KRS 342.732(5) and KRS 342.792 require the commissioner to establish procedures for the resolution of coal workers' pneumoconiosis claims and all other claims for workers' compensation benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulations repeal eliminates outdated and unconstitutional regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of the administrative regulations eliminates outdated and unconstitutional regulations.

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

(a) How the amendment will change this existing administrative regulation: 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 statutes: 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: Injured workers, employers, insurance carriers, attorneys, self-insurance groups, and third party administrators.

(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 above entities will no longer use the regulations being repealed to litigate claims

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of outdated and unconstitutional regulations will allow litigants and parties to use procedures to comply with constitutional decision and updated more modern procedures for litigating claims.

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

(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims' budget will be used which is 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 fees or funding will be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are affected.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to parties in an equal manner in workers' compensation claims.

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 parts of government with employees

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.270(3), KRS 342.033, KRS 342.285(1), KRS 342.316(3)(a), KRS 342.732(5), and KRS 342.792.

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. As an employer, there should be no costs due to the repeal.

(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 generated

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Charitable Gaming (New Administrative Regulation)

820 KAR 1:033. Electronic pulltab system, electronic pulltab device, and electronic pulltab construction.

RELATES TO: KRS 238.505(5), (27), (28), 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.530(5), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Department of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.505(27), (28) and KRS 238.545(2) require the department to establish standards for electronic pulltab device and electronic pulltab construction, distribution and rules of play. KRS 238.530(5) requires manufacturers and distributors of charitable gaming supplies and equipment to maintain records as required by the department. This administrative regulation establishes standards for the construction and distribution of electronic pulltab devices and electronic pulltabs.

Section 1. General Requirements. (1) A manufacturer shall

affix to all electronic pulltab devices an identification badge that shall include the following information:

(a) Manufacturer name;

(b) A unique serial number;

(c) The electronic pulltab device model number, if applicable;

(d) The date of manufacture, if applicable; and

(e) Any other information required by the department.

(2) An electronic pulltab system's central computer system shall be dedicated primarily to electronic accounting, reporting, and the presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by regulation or otherwise specified by the department.

(3) A player shall purchase or otherwise obtain access to an electronic pulltab device, and load money to a player account for purchase of electronic pulltabs during the current gaming occasion, only from a point of sale station. The point of sale station may be stationary, mobile, self-service, or any configuration approved by the department.

(4) A player shall only cash-out or redeem credits from a point of sale station.

(5) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the gaming occasion is being held.

(6) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.

(7) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations.

(8) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations.

(9) A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations.

Section 2. Testing and Approval of Electronic Pulltab Systems.

(1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility accepted by the department, demonstrated to the department by the manufacturer upon request of the department, and approved by the department.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and software conform, at a minimum, to the requirements and restrictions set forth in KRS 238.505(27), KRS 238.545(2), and the administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions contained in KRS 238.505(27), KRS 238.545(2) and the administrative regulations and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(c) The department shall either approve or disapprove the electronic pulltab system and software. The department shall inform the manufacturer of its decision within thirty (30) days of the demonstration, or no later than sixty (60) days after the department receives the test results from the independent testing facility. Approval shall be granted in accordance with paragraph (a) of this

subsection.

(5) Any modifications to an electronic pulltab system or its software shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, and approved by the department in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

(6) A manufacturer may conduct routine maintenance activities and replace secondary components of an electronic pulltab system without additional testing and certification as long as this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all such activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(7)(a) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(d) In choosing and directing a particular recall in accordance with paragraph (c) of this subsection, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
 2. Whether the defect affected game security;
 3. Whether the defect affected game playability;
 4. Whether the defect was limited to a specific number of deals of a particular form number;
 5. Whether the defect was easily detectable by a charitable organization;
 6. Whether the defect was easily detectable by members of the general public;
 7. Whether the defect threatens public confidence in the game;
- or
8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use if and until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(f) If a recall of an electronic pulltab system or electronic pulltab

device is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab devices to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

(8)(a) A distributor or charitable organization shall not add or remove any software programs to an approved electronic pulltab system without the written permission of the manufacturer and the department.

(b) If the department detects or discovers an electronic pulltab system at a playing location that is using components or software that were required to have been approved by the manufacturer and the department, but have not been approved, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(9) All games including game themes, sounds, and music shall be approved by the department prior to being available for play on an electronic pulltab device in the Commonwealth of Kentucky.

Section 3. Electronic Pulltab System Requirements. (1) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station when in use, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(2) The central computer system shall include a central server located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system within three (3) days of the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(3) The electronic pulltab system shall provide password protection for each organization.

(4) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or at the discretion of the department. In such cases, traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(5) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the single win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

- (a) Data element altered;
- (b) Data element value prior to alteration;
- (c) Data element value after alteration; and
- (d) Time and date of alteration.

(6) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(7) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on with two-level codes comprising the personal identification code and a personal password.

(a) The personal identification code shall have a length of at least six (6) ASCII characters.

(b) The personal password shall have a minimum length of six (6) alphanumeric characters, which shall include at least one (1) non-alphabetic character.

(8) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field verification of the electronic pulltab system components.

(9) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets which shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;
2. All accounting information; and

3. Auditing information, including all open game sets and the summary of completed game sets.

(10) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols which are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(11) An electronic pulltab system central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements set forth in this administrative regulation regarding program storage devices.

(12) An electronic pulltab system shall not display to the player, the licensed organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set, while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(13) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's gaming occasion and until the organization logs back onto the

system at the start of the organization's next scheduled gaming occasion. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(14) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

Section 4. Point of Sale Requirements. (1) An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current gaming occasion, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, self-service, or any configuration approved by the department.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music intended to entice a player to play, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

(a) The date and time of the transaction;

(b) A unique non-resettable transaction number that is printed in continuous, consecutive order;

(c) The dollar amount of the transaction, including the cost, if any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that gaming occasion;

(d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that gaming occasion;

(e) The name of the charitable organization and license number; and

(f) The point of sale identification number or name.

(3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by subsection (2) of this section.

(4) The point of sale station shall be capable of displaying, at minimum, the following for each gaming occasion:

(a) The sales transaction history, including:

1. The organization name and license number;
 2. Date and time of each transaction;
 3. Dollar value of each transaction;
 4. Quantity of electronic pulltab devices sold;
 5. All transaction numbers; and
 6. The point of sale identification number or name; and
- (b) A pay-out history detailing all pay-outs, including:

1. The organization name and license number;
2. Date and time of each pay-out;
3. Dollar value of each pay-out; and
4. Point of sale identification number or name.

(5) A point of sale station shall not display pay-out information specific to a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set, while the game set is still open for play.

Section 5. Electronic Pulltab Device Requirements. (1) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:

- (a) Is used to play one (1) or more electronic pulltab games;
- (b) Requires coded entry to activate a device for a player to purchase and play electronic pulltabs, but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs;
- (c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;
- (d) Has no vertical or horizontal spinning reels, pull handle, sounds or music solely intended to entice a player to play, flashing lights, tower light, top box, coin tray, ticket acceptor, hopper, coin acceptor, cabinet, artwork, or any other attribute or representation that mimics a video slot machine;
- (e) Shall not be capable of displaying any enticing animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;
- (f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding device, if possible; and

(g) Is not a pulltab dispenser as defined in 820 KAR 1:034.

(2) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic pulltabs as dispensed from the electronic pulltab system central computer system. The game outcome shall be determined by the electronic pulltab system central computer system.

(3) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

- (a) It shall be accurate once calibrated;
- (b) It shall be able to be recalibrated; and
- (c) It shall have no hidden or undocumented buttons or touchpoints anywhere on the touch screen.

(4) An electronic pulltab device shall not be capable of displaying the number of electronic pulltabs that remain in a game set or the number of winners or losers that have been drawn or still remain in the game set, while the game set is still open for play.

Section 6. Electronic Pulltab Requirements. (1) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(2) An electronic pulltab game shall:

- (a) Be a version of a paper pulltab game that is played on an electronic pulltab device;
- (b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;
- (c) Charge the same price for each ticket in a game set;
- (d) Require that a player press a button or perform some other function to purchase or open an electronic pulltab ticket;
- (e) Comply with all applicable statutes and administrative regulations governing pulltab games;
- (f) Comply with prize limits set forth in KRS 238.545(2);
- (g) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab;

(h) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game, and the prize structure, and the cost per play;

(i) Not contain vertical or horizontal spinning reels or other representations that mimic a video slot machine; and

(j) May have visual or audio enhancements to provide

information about the game being played if the component does not affect the outcome of a game and if any game theme, visual enhancement, sound, or music is approved by the department prior to being available for play on an electronic pulltab device.

(3) The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

(4) Any number of game themes may be selectable for play on any given electronic pulltab device. Only one (1) of the game themes shall be playable at a time.

(5) The results of the electronic pulltab shall be shown to the player using a video display. No rolling, flashing, or spinning animations, reels, or other representations that mimic a video slot machine are permitted.

(6) Any sound or music solely intended to entice a player to play shall be prohibited. Any sound or music emitted by an electronic pulltab device shall not be played at a level sufficient to disturb other players or patrons.

(7) An electronic pulltab device shall have one (1) or more buttons, electromechanical or touch screen, to facilitate the following functions:

- (a) Viewing of the game "help" screens;
- (b) Viewing of the game rules including the flare or seal card;
- (c) Initiating game play;
- (d) Cash-out or logout; and
- (e) Purchasing or revealing the pulltab.

(8) Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "play", "purchase", "open", or equivalent button to initiate the purchase of an electronic pulltab. A player may have the option of opening each individual line, row, or column of each electronic pulltab or may choose to "open all".

(9) Following play of an electronic pulltab, the result shall be clearly shown on the video display along with any prizes that may have been awarded. Prizes shall be added as a credit to the player's account.

(10) An available player account balance shall be collected by the player by pressing the "cash-out" button or "logout" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

(11) Game themes shall not contain obscene or offensive graphics, animations, or references. The department shall determine what constitutes obscene or offensive graphics, animations, or references.

(12) An electronic pulltab game shall not be capable of displaying the number of electronic pulltabs that remain in the game set, or the number of winners or losers that have been drawn or still remain in the game set, while the game set is still open for play.

Section 7. Randomization of Electronic Pulltabs. (1) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs, or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size which shall be assigned a unique serial number.

(2) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(3) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

Section 8. Flares and Seal Cards for Electronic Pulltabs. (1) Every game set shall include a flare or a seal card. The manufacturer shall include on the electronic flare or seal card the following information:

- (a) The name of the game;
- (b) The manufacturer's name or logo;
- (c) The manufacturer's form number;
- (d) The game set serial number;

(e) The predetermined finite number of tickets within the game set;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

(g) The cost per play of an electronic pulltab within the game set.

(2) Every game set of electronic pulltabs shall contain electronic rules of play.

Section 9. Electronic Accounting and Reporting. (1) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic internal accounting system shall not interfere with the outcome of any gaming function.

(2) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3) years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each gaming occasion:

1. The date and time of each log-on and log-off of an organization;

2. The total amount of all monetary transactions at each gaming occasion;

3. The total number of electronic pulltab devices sold or provided at each gaming occasion;

4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each gaming occasion;

7. The total number of electronic pulltabs played from each game set at each gaming occasion;

8. All prize payouts for each game set per gaming occasion; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(3) The information required by subsection (2) of this section shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(4) The electronic pulltab system central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(5) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets. Reporting shall be in a format requested by the department.

(6) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

Section 10. Manufacturer Requirements. (1) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following:

(a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site system, point of sale station, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;

(b) The date of the transaction with the distributor;

(c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;

(d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;

(e) The quantity of each type of electronic pulltab device;

(f) The model and version number of the system software;

(g) The name, form number, and serial number of each game set of electronic pulltabs; and

(h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(2) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site system, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The address to which the shipment was delivered;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltabs devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(3) A manufacturer providing electronic pulltabs to a distributor for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(4) The manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(5) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

Section 11. Distributor Requirements. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization which used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

(a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the

electronic pulltab devices, site system, point of sale stations, and secondary components are located for play;

(b) A description, including the quantity, of all electronic pulltab devices, site system, point of sale stations, and secondary components at each playing location;

(c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;

(d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site system, point of sale stations, and secondary components, if applicable;

(e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site system, point of sale stations, or secondary components were sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site system, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site system, point of sale stations, or secondary components are furnished; and

(h) The total dollar amount of electronic pulltab device, site system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site system, point of sale stations, or secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site system, point of sale stations, and secondary components to an agreed secure location or to an identified person.

Section 12. Charitable Organization Requirements. (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The use of electronic pulltab devices shall only be allowed at an authorized location, which shall be limited to the following:

(a) On or in the premises of a licensed charitable organization;

(b) In a licensed charitable gaming facility; or

(c) With prior approval of the department, at any authorized charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations and shall not be linked to other authorized locations.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it may be repaired or the credits may be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall print a Total Sales Activity Report at the end of each gaming occasion and maintain it with the occasion records. The Total Sales Activity Report shall be completed in the format of Form CG-EPD.

(14) A manufacturer's representative or distributor's representative may be present during a gaming occasion only to consult, demonstrate, and train the organization on the operation of the electronic pulltab system.

Section 13. Incorporation by Reference. (1) Form CG-EPD, "Electronic Pulltab Device Total Sales Activity Report", 5/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: June 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 23, 2015 at 10:30 a.m. Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day on July 31, 2015. 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: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the construction standards for electronic pulltabs, electronic pulltab devices, and electronic pulltab systems, including requirements for use of pulltabs and reporting the same.

(b) The necessity of this administrative regulation: This regulation is necessary since the passage of SB 33 which authorizes the use of electronic pulltab devices in the conduct of charitable gaming in Kentucky. This regulation is necessary to properly regulate the construction and use of these devices and games.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is KRS 238.515(2), (4), (9), KRS 238.530(5), and KRS 238.545(1), (2). KRS 238.515(2) and (9) require the Department of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.505(27), (28) and KRS 238.545(2) require the department to establish standards for electronic pulltab device and electronic pulltab construction, distribution and rules of play. KRS 238.530(5) requires manufacturers and distributors of charitable gaming supplies and equipment to maintain records as required by the department. This administrative regulation establishes standards for the construction and use of electronic pulltab devices and electronic pulltabs, as well as the reporting requirements for organizations utilizing these devices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: SB 33 of the 2015 legislative session amended KRS 238.505 and KRS 238.545 to authorize the use of electronic pulltab devices in the conduct of charitable gaming in Kentucky. Previously, only paper pulltabs were authorized for use and this regulation only governed the use of the same. This regulation facilitates effective administration of the statutes by setting construction and use standards for electronic pulltab devices and associated site systems. It also creates a form for reporting on the use of these devices at a gaming occasion and establishes the records that must be kept by manufacturers, distributors, and organizations.

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

(a) How the amendment will change this existing administrative regulation: 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: Licensed charitable organizations, distributors and manufacturers that wish to use, manufacture, or distribute electronic pulltab devices will be impacted by the regulation change. There are currently 615 licensed organizations, sixteen (16) licensed distributors, and twenty-four (24) licensed manufacturers; though the number of distributors and manufacturers is expected to rise due to the passage of SB 33. These licensees will be impacted as the regulation sets the standards for construction, use, and reporting for electronic pulltab devices and associated site systems.

(4) Provide an analysis of how the entities identified in Question (3) above 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: Licenses manufacturers will be required to manufacture their product in accordance with this regulation and have their product tested and certified by an accepted independent testing facility and approved the department. They will also be required to maintain records on all electronic pulltab transactions and sales. Distributors will be required to make sure the devices they are distributing are approved for use in Kentucky and will be required to maintain certain information regarding the purchase and distribution of these devices. They will also be required to facilitate any recall due to defect of any game. Organizations will be required to verify the devices they are purchasing or leasing are approved for use in Kentucky. They will also be required to maintain certain records and complete certain reports. They are also required to notify the department and distributor should they note any defect, malfunction, or problem with a device or game.

(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 costs associated with complying with this regulation other than standard production costs and licensing costs. Manufacturers are required to have their product tested by an independent testing facility and they are responsible for that cost. This is the same requirement as presently exists for card-minding devices.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Compliance with this regulation will allow manufacturers and distributors to market their product in Kentucky which will provide a source of income to those entities. Organizations should also benefit financially by compliance with this regulation as they will be able to utilize electronic versions of already popular pulltabs.

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

(a) Initially: There will be initial costs associated with approving an influx of electronic pulltab devices. The exact cost is unknown but will not require any additional personnel.

(b) On a continuing basis: This regulation will require continued approval of devices and games, as well as continued monitoring of their operation and use. The exact cost is unknown but the department does not anticipate this will require additional field staff.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: Any cost would be rolled in to already existing duties of the department as well as the increased revenue from the influx of new manufacturers applying for licensure who wish to market their electronic pulltab systems.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any new fees or directly or indirectly increase any fees. The only direct expense to any entity will be the cost to manufacturers to have their product tested by an independent testing facility.

(9) TIERING: Is tiering applied? No. This regulation applies equally to all licensed charitable gaming entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.505, KRS 238.515, KRS 238.530, KRS 238.545 and 820 KAR 1:058.

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 exact impact to department is unknown at this time. The department has already received several inquiries from manufacturers not presently licensed in the Commonwealth regarding obtaining a license. Each new manufacturer or distributor license will generate \$1,000 in revenue for the department. The department will also have costs associated with this regulation but the exact cost is unknown. The department will be required to review and approve numerous devices and games and will also be responsible for monitoring their use. For now the department believes these costs will be rolled into the present operating budget, but could foresee the need for additional revenue in the future to cover these costs.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation will generate \$1,000 per new manufacturer or distributor application. It will also generate revenue based upon the percentage fee on gross receipts from any organization utilizing these devices and any additional income that may generate. An exact dollar figure cannot be estimated at this point.

(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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? Again, an exact cost to administer this program during the first year is unknown, but it is anticipated it will be rolled into the current operating budget.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): The department anticipates increased revenue from use of these devices, but an exact amount cannot be determined. Revenue will be in the form of license applications and fees on gross gaming receipts.

Expenditures (+/-): The department anticipates that initial costs will be rolled into the operating budget but there will be increased expenditures relating to approval and oversight of these devices which may require additional expenditure on resources in the future.

Other explanation: The exact fiscal impact on the department is unknown at this time.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (New Administrative Regulation)

922 KAR 1:340. Standards for independent living programs.

RELATES TO: KRS 2.015, 194A.050, 194A.060, 199.011, 199.430(3), 199.640, 199.650-199.670, 600.020, 605.090(1),

610.110(6), 620.140(1)(d), 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care for independent living programs.

Section 1. Definitions. (1) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(2) "Cabinet" is defined by KRS 194A.005(1) and 600.020(6).

(3) "Child" is defined by KRS 199.011(4) and 600.020(8).

(4) "Child-placing agency" is defined by KRS 199.011(7).

(5) "Community resource" means a service or activity available in the community in addition to those provided by the child-placing agency in the care and treatment of a child.

(6) "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in Section 3(1) of this administrative regulation.

(7) "Independent living services" means services provided to an eligible child, as specified in 922 KAR 1:310, Section 16, to assist the child in the transition from dependency of childhood to living independently.

(8) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(9) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(10) "Social services worker" means a person who meets the qualifications established within 922 KAR 1:310, Section 2.

(11) "Supervision plan" means a written supplement to a child's ITP, developed in accordance with 922 KAR 1:310, Section 6, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(12) "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

Section 2. Administration and Operation. (1) Licensing procedures for an independent living program shall be:

(a) In compliance with 922 KAR 1:310 for a private child-placing agency; and

(b) Administered pursuant to 922 KAR 1:305.

(2) An independent living program shall meet the requirements of 922 KAR 1:310.

(3) For purposes of this administrative regulation, a child may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.

Section 3. Independent Living Program. (1) A child-placing agency providing independent living programming shall be in compliance with 922 KAR 1:310 and staff shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within fourteen (14) days of a child's placement with the child-placing agency and provision of services by the agency's independent living program; and

2. Using a tool to assess:

a. Money management and consumer awareness;

b. Job search skills;

c. Job retention skills;

d. Use of and access to:

(i) Community resources;

(ii) Housing; and

(iii) Transportation;

e. Educational planning;

f. Emergency and safety skills;

g. Legal knowledge;

h. Interpersonal skills, including communication skills;

i. Health care knowledge, including knowledge of nutrition;

j. Human development knowledge, including sexuality;

k. Management of food, including food preparation;

l. Ability to maintain personal appearance;

m. Housekeeping; and

n. Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;

2. Objectives to accomplish a goal;

3. Methods of service delivery necessary to achieve a goal and an objective;

4. Person responsible for each activity;

5. Specific timeframes to achieve a goal and an objective;

6. Identification of a discharge plan;

7. Plan for aftercare services; and

8. Plan for services from community resources;

(c) Maintain written policies and procedures for the independent living program;

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:

1. Content of the independent living curriculum;

2. Use of the independent living materials;

3. Application of the assessment tool; and

4. Documentation methods used by the child-placing agency;

and

(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a), including:

1. Money management and consumer awareness;

2. Job search skills;

3. Job retention skills;

4. Educational planning;

5. Community resources;

6. Housing;

7. Transportation;

8. Emergency and safety skills;

9. Legal skills;

10. Interpersonal skills, including communication skills;

11. Health care, including nutrition;

12. Human development, including sexuality;

13. Food management, including food preparation;

14. Maintaining personal appearance;

15. Housekeeping;

16. Leisure activities;

17. Voting rights and registration;

18. Registration for selective service, if applicable;

19. Self-esteem;

20. Anger and stress management;

21. Problem-solving skills; and

22. Decision-making and planning skills.

(2) A social services worker from an independent living program shall:

(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program and provide supervision in accordance with the child's supervision plan;

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program,

regardless of the child's age;

(c) Have:

1. Daily face-to-face contact with a child:

a. Sixteen (16) to eighteen (18) years of age; and

b. In the independent living program; or

2. A minimum of one (1) face-to-face, in-home contact per week for a child:

a. Eighteen (18) to twenty-one (21) years of age; and

b. In the independent living program;

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;

2. Use of alcohol; and

3. Illegal contraband;

(e) Maintain a caseload of no more than ten (10) children, including independent living program:

1. Participants sixteen (16) to twenty-one (21) years of age; and

2. Participants' children assigned a Level of Care of III or higher; and

(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3)(a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated; and

(c) Complies with state and local health requirements regarding water and sanitation.

(5) The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Health care and therapeutic services received by a child;

(c) Progress each child has made in the independent living program, including independent living services received;

(d) Progress in an educational program, including vocational education;

(e) An assessment of the child's readiness to live independently; and

(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for independent living programs for private child-placing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for independent living programs for private child-placing agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its incorporation of standards for independent living programs.

(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 distinguishing standards for independent living programs operated by child-placing agencies.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect forty-five (45) private child-placing agencies with as independent living subcategory licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will not require any additional actions on the part of program recipients or agency programs. Standards for independent living programs contained in 922 KAR 1:310 have been moved to this new administrative regulation to enhance clarity and provide distinction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur no new or additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation clarifies and distinguishes standards for independent living programs provided by child-placing agencies.

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

(a) Initially: The administrative body projects no new or additional initial costs as a result of this administrative regulation.

(b) On a continuing basis: The administrative body projects no new or additional ongoing costs as a result of this administrative regulation.

(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 federal and state funds under Title IV-E of the Social Security Act and 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: The amendment to this administrative regulation does not require an increase in fees or funding.

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

directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 677(a)(1)-(6)

2. State compliance standards. 194A.050(1), 199.640(5)(a), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 677(a)(1)-(6)

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 federal mandate.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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. 677(a)(1)-(6), 194A.050(1), 199.640(5)(a), 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 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? This administrative regulation will not result in any new or additional costs 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 costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Administrative Regulation)

922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

RELATES TO: KRS 61.870, 158.135(1)(c), 194A.005(1), 199.011(9), 199.464, 199.640, 311.720(9), 311.840(3), 314.011(5), (7), 600.020, 620.360. 45 C.F.R. Parts 160, 164, 42 U.S.C. 671(a)(24), 42 U.S.C. 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.640(5), 605.100(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472 authorizes the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for adoptive parenthood. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. In addition, 42 U.S.C. 671(a)(24) includes a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child. This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

Section 1. Definitions. (1) "Adoptive parent" means an individual who is seeking to adopt a child placed in the custody of the cabinet.

(2) "Applicant" means an individual or family, subject to approval by the cabinet, or by a private child-placing agency, as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(6).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in 922 KAR 1:350, Section 5.

(5) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(9) and 600.020(28), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by:

1. A child-placing agency in accordance with 922 KAR 1:310;

or

2. The cabinet in accordance with 922 KAR 1:350.

(6) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(9);

(b) Physician's assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(6) "Medically complex" means a foster care program for a child who is determined to have a medical condition as specified in 922 KAR 1:350, Section 4.

(7) "Professional experience" means paid employment or volunteer work in a setting where there is supervision or periodic evaluation.

(8) "Reasonable and prudent parent standard" is defined by 42 U.S.C. 675.

(9) "Respite care" means temporary care provided by another individual or family:

(a) To provide relief to a foster or adoptive parent approved in accordance with 922 KAR 1:310 or 922 KAR 1:350; and

(b) With the expectation of a child's return to the current foster or adoptive home.

(10) "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(11) "Trauma informed care" means training developed using an organizational strengths-based framework to recognize and respond to the impact of traumatic stress on children, caregivers, and service providers with a goal to facilitate and support the recovery and resiliency of the child and family.

Section 2. General Training Requirements. (1) The purpose of the foster or adoptive parent training shall be to:

(a) Orient the applicant to the philosophy and process of the foster care or adoption programs;

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet;

(d) Effect behavior so that an applicant may better fulfill the role as a foster or adoptive parent to a child; and

(e) Emphasize:

1. Self-evaluation; and

2. Experiential learning through:

a. Participation in small group exercises; and

b. Discussion with experienced foster parents.

(2)(a) A foster or adoptive parent applicant shall complete a minimum of fifteen (15) hours of curricula in the following topic areas:

1. Information about the rights, responsibilities, and expectations of a foster or adoptive parent;

2. The importance of birth parents and culture;

3. The process of a child entering foster care;

4. Types of child maltreatment;

5. Impact of childhood trauma;

6. Stages of grief;

7. Long term effects of separation and loss;

8. Permanency planning for a child, including independent living for transitioning youth;

9. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;

10. Family functioning, values, and expectations of a foster or adoptive home;

11. Cultural competency;

12. Emergency preparedness;

13. Child development;

14. Basic discipline and behavior management skills;

15. Reasonable and prudent parent standard; and

16. Supporting independent living skills.

(b) Effective July 1, 2016, training curricula specified in paragraph (a) of this subsection shall be:

1. Provided by the cabinet; or

2. Approved by the cabinet in accordance with Section 8 of this administrative regulation.

(c) Unless an exception is approved pursuant to paragraph (d) of this subsection, foster or adoptive parent training for placement of a child in the custody of the cabinet shall be completed in a group setting by each adult who resides in the household and may provide routine care to a child in the custody of the cabinet.

(d) An exception to group foster or adoptive parent training requirements provided within paragraph (c) of this subsection may be requested:

1. Due to a scheduling conflict involving work, military service, or extraordinary circumstance, which prevents foster or adoptive parent training in a group setting; and

2. Utilizing the DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training, with submission to designated cabinet staff who shall issue a decision

within five (5) business days.

(e) If an exception is approved in accordance with paragraph (d) of this subsection, the foster or adoptive parents shall complete a curriculum approved by the cabinet.

(3) In addition to initial training requirements in subsection (2)(a) of this section, a foster or adoptive parent applicant shall complete the following electronic courses provided by the cabinet prior to approval:

- (a) Pediatric Abusive Head Trauma;
- (b) First Aid and Universal Precautions;
- (c) Medication Administration; and
- (d) Medical Passports.

(4) First aid certification may substitute for the training requirement provided within subsection (3)(b) of this section if the foster or adoptive parent applicant provides documentation of current certification.

Section 3. General Annual Training Requirements. (1)(a) Prior to the first anniversary month of a foster or adoptive parent's initial approval, the foster or adoptive parent shall complete a minimum of twelve (12) hours of annual training.

(b) Prior to the second anniversary month of a foster or adoptive parent's initial approval, the foster or adoptive parent shall complete a minimum of thirty (30) hours of training, which includes all hours completed in accordance with paragraph (a) of this subsection.

(c) With the exception of subparagraph 2 of this paragraph which shall be provided by the cabinet, the training prescribed in paragraphs (a) and (b) of this subsection shall be curricula provided or approved by the cabinet in the following areas:

- 1. Trauma informed care;
- 2. Psychotropic medications;
- 3. Sexual abuse; and
- 4. Behavior management and skill development.

(2) Prior to or during the month of the third anniversary of the foster or adoptive parent's initial approval and each subsequent year thereafter, the foster or adoptive parent shall complete ten (10) hours of:

(a) Private child-placing agency or cabinet-sponsored training, or training approved in advance by the private child-placing agency or the cabinet; and

(b) Training as specified in Section 2(3)(a) of this administrative regulation which shall be completed once every five (5) years.

Section 4. Medically Complex Foster Parent Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a medically complex foster parent applicant shall:

(a) Complete twelve (12) hours of cabinet-provided medically complex training in the following topic areas specific to children with medical complexity:

- 1. Growth and development;
- 2. An overview of procedures and techniques which may be utilized to provide care;
- 3. Observation and assessment;
- 4. Management of diet and environment;
- 5. Documentation of provided care;
- 6. Parenting skills; and
- 7. Permanency planning; and

(b) Hold a current certification in infant, child, and adult CPR and first aid.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent, an approved medically complex foster parent shall:

- (a) Meet the requirements in subsection (1)(b) of this section;
- (b) Complete the annual training requirements as specified in Section 3(1) and (2) of this administrative regulation; and

(c) Complete twelve (12) hours of ongoing cabinet-provided training related to the care of children with medical complexity.

(3) Professional experience related to the care of a child with medical complexity may substitute for the initial and annual medically complex training requirements specified in subsection

(1)(a) and (2)(c) of this section:

(a) Upon the approval of designated cabinet staff; and

(b) If the foster or adoptive parent:

- 1. Is a health professional; and
- 2. Has completed continuing education focusing on pediatrics within the past year that will assist the parent in the care of a child with medical complexity.

Section 5. Therapeutic Foster Care Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a therapeutic foster care applicant in accordance with 922 KAR 1:310 shall complete twelve (12) hours of private agency-sponsored training or training approved in advance by the child-placing agency in the following topic areas:

(a) Specific requirements and responsibilities of a therapeutic foster care home;

(b) Crisis intervention and behavior management;

(c) De-escalation techniques;

(d) Communication skills;

(e) Skill development;

(f) Cultural competency;

(g) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(h) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent, an approved therapeutic foster parent shall:

(a) Complete the annual training requirements as specified in Section 3(1) and (2) of this administrative regulation; and

(b) Complete twelve (12) hours of private agency-sponsored training or training approved in advance by the private agency in the topic areas described in subsection (1) of this section.

(3) A therapeutic foster care applicant may concurrently complete general training requirements as specified in Section 2 of this administrative regulation and training requirements established in subsection (1) of this section.

Section 6. Care Plus Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a care plus applicant in accordance with 922 KAR 1:350 shall complete twelve (12) hours of cabinet-sponsored training or training approved in advance by the cabinet in the following topic areas:

(a) Specific requirements and responsibilities of a care plus foster home;

(b) Crisis intervention and behavior management;

(c) De-escalation techniques;

(d) Communication skills;

(e) Skill development;

(f) Cultural competency;

(g) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(h) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent, an approved care plus foster parent shall:

(a) Complete the annual training requirements as specified in Section 3(1) and (2) of this administrative regulation; and

(b) Complete twelve (12) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet prior to or during the anniversary month of initial approval as a foster parent in the topic areas described in subsection (1) of this section.

Section 7. Respite Care Providers. If a respite provider is not approved as a foster or adoptive parent in accordance with 922 KAR 1:350 or 922 KAR 1:310, prior to initial approval as a respite care provider, the individual shall complete a minimum of two (2) hours of cabinet-provided electronic curriculum.

Section 8. Preapproval of General or Annual Training Curricula. (1) If a private child-placing agency intends to offer curricula other than curricula provided by the cabinet as specified in Sections 2(2) or 3(1)(c) of this administrative regulation, the private child-placing agency shall submit its curricula to the cabinet or its designee for consideration.

(2) The cabinet shall approve curricula that are:

(a) Comparable in content to curricula provided by the cabinet; or

(b) Recognized evidence-based practices.

(3) The cabinet shall make a determination:

(a) Within thirty (30) calendar days; or

(b) As a part of the child-placing agency's application in accordance with 922 KAR 1:360.

Section 9. Incorporation by Reference. (1) "DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training", 10/15, is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until July 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish and establish training requirements for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(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 training preparation expectations for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of training standards for foster parents, adoptive parent, and respite care 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 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: As of January 4, 2015, there were 6,171 approved foster homes through either a private child-placing or this state agency that will require ongoing training. This administrative regulation also impacts future individuals and families who will receive initial and ongoing training as they seek approval as a foster parent, adoptive parent, or respite care provider for children in the custody of 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: Current foster parent, adoptive parent, and respite care provider trainings are established within 922 KAR 1:310 for private child-placing agencies, and within 922 KAR 1:350 for the public agency foster or adoptive homes. This administrative new regulation was established to create consistent training expectations for foster homes caring for children placed in the custody of the cabinet.

(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): Foster parents, adoptive parents, and respite care providers serving children in the custody of the cabinet will receive consistent training whether they are approved through a private child-placing or the state agency. Parents and providers will have training offerings designed to optimize preparation for parenting children in the custody of the cabinet.

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

(a) Initially: The administrative body does not anticipate any new or additional costs to implement expectations established within this regulation. Training expectations presently exist in 922 KAR 1:310 for private child-placing agencies and 922 KAR 1:350 for public agency homes.

(b) On a continuing basis: The administrative body does not anticipate any new or additional costs to implement expectations established within this regulation. Training expectations presently exist in 922 KAR 1:310 for private child-placing agencies and 922 KAR 1:350 for public agency homes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and state funds under Title IV-E the Social Security Act and General 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: There will be no increases in fees or funding 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(24)
2. State compliance standards. 194A.050(1), 199.472, 199.640(5), 605.100(1), 605.150(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(24)
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, additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, additional, or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 199.640(5), 605.100(1), 605.150(1), 42 U.S.C. 671(a)(24)
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for the subsequent years.
 - (c) How much will it cost to administer this program for the first year? This administrative regulation will generate no new or additional costs of the first year.
 - (d) How much will it cost to administer this program for subsequent years? This administrative regulation will generate no new or additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of June 9, 2015

Members: Senators Julie Raque Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representative Denver Butler.

LRC Staff: Donna Little, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Emily Caudill, Ange Bertholf, and Betsy Cupp.

Guests: Travis Powell, Council on Postsecondary Education; Maryellen Allen, Lynn Zellen, State Board of Elections; Kendy Parks, Department of Revenue; Karalee Oldenkamp, Board of Chiropractic Examiners; Ann Tyler Morgan, Charles O'Neal, Board of Emergency Medical Services; Tim Arnold, Department of Public Advocacy; John Cummings, Parole Board; Amy Barker, Department of Corrections; Elena Butler, Ann D'Angelo, Bill Gorton, Troy Hearn, Ryan Halloran, Catherine McBride, Jason Ramler, Rick Taylor, Lynn Soporowski, Jeff Tipton, Erik Wright, Transportation Cabinet; James Cundy, Wayne Onkst, Barbara Teague, Department for Libraries and Archives, John Alexander, Tammy Scruggs, Jessica Sharpe, Charles Vic, Department of Financial Institutions; Jamie Eads, Marc Guilfoil, Katherine Paisley, Horse Racing Commission; Elizabeth Caywood, Virginia Carrington, Department of Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, June 9, 2015, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:045 & E. Determination of residency status for admission and tuition assessment purposes. Travis Powell, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:010. General Administrative Forms Manual. Kendy Parks, internal policy analyst II, represented the department.

In response to a question by Co-Chair Harris, Ms. Parks stated that new forms, which in some cases seemed duplicative, were necessary because two (2) new data systems required information to be submitted in a specific way.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board

201 KAR 21:090 & E. Prechiropractic education requirements. Dr. Karalee Oldenkamp, executive director, represented the board.

In response to a question by Co-Chair Harris, Dr. Oldenkamp stated that this administrative regulation mimicked the national organization's changes. This administrative regulation, before amendment, referred to specific coursework that conflicted with the national requirements. Exceptions were previously granted so that Kentucky students could take the test, but those exceptions did not mean the students were eligible for licensure in Kentucky. The authorizing statute required graduation from a college accredited by the Council on Chiropractic Education; therefore, the specific coursework requirements were redundant to the statute and in conflict with the national organization's requirement. The redundancy and conflicts were deleted.

Kentucky Community and Technical College System: Board of Emergency Medical Services: Board

202 KAR 7:701. Scope of practice matters. Anne – Tyler Morgan, counsel, and Charles O'Neal, deputy executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. O'Neal stated that this administrative regulation was related to recent legislation pertaining to heroin abuse. If bystanders were authorized to administer Naloxone, EMS personnel should be trained and prepared to administer Naloxone as well. Ms. Morgan stated that, if new drugs with similar uses became available, this administrative regulation would be amended to include those specific drugs and to establish the specific training for administration of those drugs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 11 to add a document to the list of items incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend CPP 3.14, 5.3, 9.4, 14.6, 17.1, and 17.2 to: (a) correct citations; and (b) comply with the drafting requirements of KRS Chapter 13A; (2) to amend CPP 10.2, 13.13, and 18.3 to: (a) add citations; (b) include additional definitions; and (c) clarify procedures; and (3) to amend Section 1 to update the edition dates for the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Vehicle Tax

601 KAR 9:135. Appointed registration. Ann D'Angelo, assistant general counsel; Rick Taylor, deputy commissioner; and Jeff Tipton, administrative branch manager, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4 through 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 12 to add the IRP Audit Assistance manual to the list of documents incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Bicycle and Bikeways Commission: Office of the Secretary: Motorcycle and Bicycle Safety

601 KAR 14:020. Bicycle safety standards. Ann D'Angelo, assistant general counsel; Rick Taylor, deputy commissioner; and Bill Gorton, commission chair, represented the commission. Eric Wright, assistant Jessamine County attorney, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Harris, Mr. Wright stated that a provision in Section 7(1)(a) of this administrative regulation was in conflict with KRS 189.300. KRS 189.300 required slower vehicles to keep to the right. The conflict centered on the use of "highway" versus "roadway" in the statute and administrative regulation. Section 7(1)(a) of this administrative regulation stated that "Where bicycle travel on shoulders is permitted, it shall not be required." The commission, Mr. Wright, and the subcommittee agreed to an oral amendment to delete the sentence.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Sections 1, 5, and 7 to: (a) clarify requirements; and (b) comply with the drafting and formatting

requirements of KRS Chapter 13A; and (3) to amend Section 7(1)(a) to delete the sentence "Where bicycle travel on shoulders is permitted, it shall not be required." Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Archives and Records Management Division: Archives

725 KAR 1:061. Records retention schedules; authorized schedules. James Cundy, branch manager; Wayne Onkst, commissioner; and Barbara Teague, division director, represented the division.

In response to questions by Co-Chair Harris, Ms. Teague stated that LRC had a retention schedule, and this administrative regulation did apply to LRC as well as other agencies. The department welcomed input from state agencies on needed updates to the retention schedules.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Division of Non-Depository Institutions: Consumer Loans

808 KAR 6:015. Licensure application; annual report. Charles Vice, commissioner; John Allender, staff attorney; and Tammy Scruggs, division director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend the STATUTORY AUTHORITY paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 6:105. Records required.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:090. Kentucky thoroughbred development fund. Jamie Eads, division director; Marc Guilfoil, director of racing; and Katherine Paisley, deputy general counsel, represented the commission.

In response to questions by Co-Chair Harris, Ms. Paisley stated that racetracks received the financial benefit from excess thoroughbred development fund money, which allowed for funding of the purses and had a positive impact on various economies.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:045. Issuance procedures. Elizabeth Caywood, internal policy analyst IV, and Virginia Carrington, director, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Carrington stated that this administrative regulation would improve selection for the participants by distributing items more evenly over a longer time period. For instance, fruits and vegetables could be stocked throughout the month and participants shopping later in the month would have access to fresh produce.

In response to a question by Senator Kerr, Ms. Carrington stated that a recent letter from the USDA regarding Kentucky being out of compliance was regarding hearings related to potential fraud. That letter did not apply to this administrative regulation.

The following administrative regulations were deferred to the July 14, 2015, meeting of the Subcommittee:

KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:040. Electronic Voter Registration System. Maryellen Allen, executive director, and Lynn Zellen, general counsel, represented the board.

In response to questions by Senator Kerr, Ms. Zellen stated that these administrative regulations were authorized by the board's general authority to promulgate methods for voter registration. Statutory deadlines and eligibility requirements applied to electronic voter registration, and the system was commensurate with the system already in place for absentee registration for voters serving in the armed forces. Personal identifying information would be entered into the computer system, which may be optimized for use with mobile devices. The data would be forwarded to the applicable county clerk's office and compared with data already established. The voter signature would be accomplished by using the driver's license signature already on file with the Transportation Cabinet. Fraud risk was mitigated by existing perjury penalties, which were the same for paper and electronic voter registration.

In response to a question by Representative Butler, Ms. Allen stated that the personal data match requirements were the same for paper and electronic voter registration.

In response to a question by Co-Chair Harris, Ms. Zellen stated that the nonpartisan council supported, but did not propose, legislation during the 2015 Regular Session of the General Assembly to establish explicit authority for electronic voter registration. Twenty-seven (27) states already had a similar system, and there was insufficient time before the next presidential election to pursue the legislative process again. These administrative regulations would make voter registration easier for voters and less costly for the state. In response, Co-Chair Harris stated that, while the provisions of these administrative regulations may be necessary, implementing failed legislation via administrative regulations seemed problematic.

Senator Clark stated that the proposed legislation may have been developed independently of the board.

Ms. Zellen requested deferral of this administrative regulation and 31 KAR 4:120 to the July 14 meeting of the subcommittee. Without objection, and with agreement of the agency, these administrative regulations were deferred.

Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

GENERAL GOVERNMENT CABINET: Board of Hairdressers and Cosmetologists: Board

201 KAR 12:083. Educational requirements.

201 KAR 12:110. School license.

Board of Medical Imaging and Radiation Therapy: Board

201 KAR 46:070. Violations and enforcement.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board

501 KAR 1:080. Parole Board policies and procedures. John Cummings, attorney, represented the board.

In response to a question by Representative Butler, Mr. Cummings requested that the board be allowed to defer this administrative regulation to the July 14 meeting of the subcommittee in order to address stakeholder concerns regarding risk and needs assessment provisions. Without objection, and with agreement of the subcommittee, this administrative regulation was deferred to the July 14 meeting of the subcommittee.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Carriers

601 KAR 1:112 & E. Transportation network company.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and

Safety: Sanitation

902 KAR 10:022. Repeal of 902 KAR 10:020 and 10:021.

Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

902 KAR 20:180. Psychiatric hospitals; operation and services.

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

902 KAR 20:400. Limited services clinics.

Food and Cosmetics

902 KAR 45:011. Repeal of 902 KAR 45:010, 45:030, 45:040, 45:050, 45:060, and 45:130.

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

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services.

Division of Policy and Operations: Medicaid Services

907 KAR 1:046. Community mental health center primary care services.

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 9:010. Reimbursement for non-outpatient Level I and Level II psychiatric residential treatment facility services.

The Subcommittee adjourned at 2:02 p.m. until July 14, 2015, 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 EDUCATION Meeting of June 8, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of June 8, 2015, having been referred to the Committee on June 3, 2015, pursuant to KRS 13A.290(6):

703 KAR 5:200
703 KAR 5:225
703 KAR 5:240

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 8, 2015, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of June 17, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of June 17, 2015, having been referred to the Committee on June 3, 2015, pursuant to KRS 13A.290(6):

900 KAR 2:050
908 KAR 2:220 & E
908 KAR 2:230 & E
908 KAR 2:260 & E
910 KAR 1:140
910 KAR 1:210
910 KAR 1:220

The following administrative regulations were deferred pursuant to KRS 13A.300:

910 KAR 1:170

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 17, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

A - 2

The Locator Index lists all administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky* from July 2015 through June 2016. 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 41 are those administrative regulations that were originally published in VOLUME 41 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2015 *Kentucky Administrative Regulations Service* was published.

KRS Index

A - 6

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 42 of the *Administrative Register of Kentucky*.

Technical Amendment Index

A - 8

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2015 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

A - 9

The Subject Index is a general index of administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
----------------------	----------------------	-------------------	----------------------	----------------------	-------------------

VOLUME 41

The administrative regulations listed under VOLUME 41 are those administrative regulations that were originally published in Volume 41 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2015 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- **** Emergency expired after 180 days
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

13 KAR 2:045E	2062	3-2-15
31 KAR 4:180E	2527	5-5-15
103 KAR 3:030E	1958	1-16-15
103 KAR 3:040E	1742	12-31-14
201 KAR 2:360E	2529	5-14-15
201 KAR 21:090E	1969	2-10-15
601 KAR 1:112E	1481	12-5-14
900 KAR 7:030E	1755	12-31-14
907 KAR 1:045E	1759	12-31-14
907 KAR 3:017E	1764	12-31-14
908 KAR 2:220E	1766	1-7-15
908 KAR 2:230E	1770	1-7-15
908 KAR 2:260E	1773	1-7-15
921 KAR 2:015E	1776	12-30-14
921 KAR 3:060E	2530	4-30-15
921 KAR 3:070E	2533	4-30-15

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 4:080		
Amended	2099	
11 KAR 5:145		
Amended	2100	
11 KAR 15:010		
Amended	2102	
As Amended	2538	
11 KAR 15:090		
Amended	2104	
13 KAR 2:045		See 42 Ky.R.
Amended	2108	
31 KAR 3:040	2447	
31 KAR 4:120		
Amended	2285	
31 KAR 4:180	2689	
101 KAR 2:102		
Amended	2113	
As Amended	2538	
101 KAR 2:105		
Amended	2118	
As Amended	2542	
101 KAR 2:106		
Amended	2120	
As Amended	2543	
101 KAR 2:160		
Amended	2121	
101 KAR 2:180		
Amended	2123	
As Amended	2544	

101 KAR 2:210		
Amended	845	
101 KAR 3:015		
Amended	2125	
As Amended	2546	
103 KAR 3:010		
Amended	2287	See 42 Ky.R.
103 KAR 3:030		
Amended	2015	
AmComments	2226	
103 KAR 3:040		
Amended	1841	
As Amended	2199	
103 KAR 15:180		
Amended	85	
As Amended	439	
200 KAR 14:011		
Amended	2604	
200 KAR 14:081		
Amended	2607	
201 KAR 2:015		
Amended	2609	
201 KAR 2:360	2691	
201 KAR 10:050		
Amended	2131	
201 KAR 12:083		
Amended	2292	
201 KAR 12:110		
Amended	2294	
Withdrawn		6-17-15
201 KAR 20:063	2692	
201 KAR 21:090		
Amended	2026	
201 KAR 44:010		
Amended	2132	
As Amended	2550	
201 KAR 45:120		
Amended	2611	
201 KAR 45:170	211	
Amended	2612	
201 KAR 46:010		
Amended	2295	
201 KAR 46:020		
Amended	2299	
201 KAR 46:030		
Amended	2301	
201 KAR 46:040		
Amended	2304	
201 KAR 46:045	2449	
201 KAR 46:050	2450	
201 KAR 46:060	2452	
201 KAR 46:070		
Amended	2308	
201 KAR 46:081		
Amended	2309	
202 KAR 7:701		
Amended	2313	See 42 Ky.R.
301 KAR 1:122		
Amended	2614	
301 KAR 2:049		
Amended	2615	
301 KAR 2:132		
Amended	1868	
301 KAR 2:172		
Amended	1873	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
AmComments	2092		Amended	2353	
301 KAR 2:178			803 KAR 1:035		
Amended	1878		Amended	2045	
301 KAR 2:300			As Amended	2550	
Amended	2318		804 KAR 1:061(r)	2696	
301 KAR 3:132			804 KAR 4:370		
As Amended	2208		Amended	2630	
301 KAR 2:178			804 KAR 7:011(r)	2180	
As Amended	2212		804 KAR 10:010		
302 KAR 20:110			Amended	2632	
Amended	2027		804 KAR 10:020		
As Amended	2217		Amended	2633	
302 KAR 20:120			804 KAR 10:025	2697	
Amended	2030		805 KAR 1:100		
As Amended	2219		Amended	2355	
402 KAR 3:010			805 KAR 1:130		
Amended	2619		Amended	2361	
402 KAR 3:030			805 KAR 1:140		
Amended	2621		Amended	2364	
402 KAR 3:050	2694		805 KAR 1:170		
500 KAR 13:020			Amended	2366	
Amended	2623		808 KAR 6:015	2462	See 42 Ky.R.
501 KAR 1:080			808 KAR 6:105		
Amended	2032		Amended	2369	See 42 Ky.R.
501 KAR 6:020			808 KAR 9:010		
Amended	1887	See 42 Ky.R.	Amended	2634	
503 KAR 1:060			808 KAR 12:020		
Amended	326		Amended	2636	
As Amended	747		808 KAR 12:021		
503 KAR 1:080			Amended	2638	
Amended	591		808 KAR 12:110	2698	
As Amended	1056		810 KAR 1:027		
503 KAR 1:100			Amended	612	
Amended	595		As Amended	1066	
As Amended	1057		810 KAR 1:090		
503 KAR 1:110			Amended	2371	See 42 Ky.R.
Amended	2626		810 KAR 1:300	2699	
503 KAR 1:120			811 KAR 1:300	2701	
Amended	327		811 KAR 2:300	2702	
As Amended	747		815 KAR 6:010		
601 KAR 1:112	1725		Amended	2641	
AmComments	2095		815 KAR 35:015		
601 KAR 9:135			Amended	2645	
Amended	2321	See 42 Ky.R.	900 KAR 2:050		
601 KAR 14:020		See 42 Ky.R.	Amended	2133	
603 KAR 5:155	2453		As Amended	2551	
603 KAR 10:002	2456		900 KAR 5:020		
603 KAR 10:010			Amended	2649	
Amended	2325		900 KAR 7:030		
603 KAR 10:021	2458		Amended	1891	
702 KAR 3:320	1728		900 KAR 10:010		
AmComments	2012		Amended	2651	
As Amended	2220		900 KAR 10:020		
703 KAR 5:200			Amended	2658	
Amended	2034		900 KAR 10:040	2464	
AmComments	2236	See 42 Ky.R.	900 KAR 10:050		
703 KAR 5:225			Amended	2664	
Amended	2037		900 KAR 10:100		
AmComments	2240	See 42 Ky.R.	Amended	2667	
703 KAR 5:240			900 KAR 10:110	2704	
Amended	2042	See 42 Ky.R.	902 KAR 4:041(r)	2051	
704 KAR 3:370			902 KAR 10:022	2468	
Amended	2342		902 KAR 20:091		
704 KAR 5:070			Amended	1896	
Amended	2351		AmComments	2245	
705 KAR 4:250			902 KAR 20:160		
Amended	1144		Amended	2374	
AmComments	1672		902 KAR 20:180		
As Amended	2223		Amended	2383	
725 KAR 1:061			902 KAR 20:320		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
Amended	2393		907 KAR 10:025	2503	
902 KAR 20:400			907 KAR 10:826(r)	2181	
Amended	1905		907 KAR 10:830	2182	
AmComments	2256		907 KAR 15:080	2507	
902 KAR 45:011	2469		907 KAR 15:085	2515	
902 KAR 45:110			908 KAR 2:220		
Amended	2414		Amended	1925	
902 KAR 45:120			AmComments	2273	
Amended	2672		As Amended	2560	
902 KAR 45:160	2470		908 KAR 2:230		
907 KAR 1:044			Amended	1929	
Amended	1910		AmComments	2277	
AmComments	2261		As Amended	2562	
As Amended	2553		908 KAR 2:260	1945	
907 KAR 1:045			AmComments	2280	
Amended	1915		As Amended	2565	
907 KAR 1:046	1940		910 KAR 1:140		
AmComments	2266		Amended	2138	
907 KAR 1:055			As Amended	2568	
Amended	2674		910 KAR 1:170		
907 KAR 1:102			Amended	2143	
Amended	1920		As Amended	2573	
AmComments	2268		910 KAR 1:210		
As Amended	2556		Amended	2150	
907 KAR 1:350			As Amended	2578	
Amended	2136		910 KAR 1:220		
As Amended	2559		Amended	2157	
907 KAR 3:017	1943		As Amended	2583	
As Amended	2224		921 KAR 2:015		
907 KAR 9:005			Amended	1932	
Amended	2417		921 KAR 3:045		
907 KAR 9:010			Amended	2177	
Amended	2425		921 KAR 3:060		
907 KAR 9:015	2475		Amended	2682	
907 KAR 9:020	2487		921 KAR 3:070		
907 KAR 10:014			Amended	2685	
Amended	2428				
907 KAR 10:016					
Amended	2442				
907 KAR 10:020	2491				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
VOLUME 42					
SYMBOL KEY:			Amended	106	
* Statement of Consideration not filed by deadline			787 KAR 2:040	196	
** Withdrawn before being printed in Register			803 KAR 2:180		
**** Emergency expired after 180 days			Amended	108	
(r) Repealer regulation: KRS 13A.310-on the effective date of an			803 KAR 2:200		
administrative regulation that repeals another, the regulations			Amended	110	
compiler shall delete the repealed administrative regulation and			803 KAR 2:250		
the repealing administrative regulation.			Amended	113	
			803 KAR 2:305		
			Amended	116	
EMERGENCY ADMINISTRATIVE REGULATIONS:			803 KAR 2:317		
(Note: Emergency regulations expire 180 days from the date filed;			Amended	117	
or 180 days from the date filed plus number of days of requested			803 KAR 2:402		
extension, or upon replacement or repeal, whichever occurs first.)			Amended	119	
			803 KAR 2:421		
787 KAR 2:040E	6	5-21-15	Amended	121	
			803 KAR 2:505		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	124	
13 KAR 2:045		See 41 Ky.R.	803 KAR 25:008	198	
As Amended	9		803 KAR 25:013(r)	208	
16 KAR 2:020			804 KAR 4:390		
Amended	72		Amended	126	
16 KAR 4:030			805 KAR 1:100		See 41 Ky.R.
Amended	74		AmComments	46	
101 KAR 2:020			805 KAR 1:130		See 41 Ky.R.
Amended	76		AmComments	53	
101 KAR 2:034			805 KAR 1:140		See 41 Ky.R.
Amended	78		AmComments	55	
101 KAR 2:046			805 KAR 1:170		See 41 Ky.R.
Amended	83		AmComments	58	
101 KAR 2:056			808 KAR 6:015		See 41 Ky.R.
Amended	85		As Amended	35	
101 KAR 2:066			808 KAR 6:105		See 41 Ky.R.
Amended	86		As Amended	35	
101 KAR 2:120			810 KAR 1:090		See 41 Ky.R.
Amended	88		As Amended	36	
101 KAR 3:045			815 KAR 20:060		
Amended	91		Amended	127	
103 KAR 3:010		See 41 Ky.R.	815 KAR 20:100		
As Amended	12		Amended	130	
201 KAR 30:070			815 KAR 20:130		
Amended	95		Amended	133	
202 KAR 7:701		See 41 Ky.R.	820 KAR 1:001		
As Amended	17		Amended	138	
301 KAR 1:146			820 KAR 1:032		
Amended	97		Amended	142	
501 KAR 6:020		See 41 Ky.R.	820 KAR 1:033	209	
As Amended	21		902 KAR 115:010		
501 KAR 6:270			Amended	145	
Amended	99		907 KAR 1:026		
601 KAR 9:135		See 41 Ky.R.	Amended	148	
As Amended	22		907 KAR 1:626		
601 KAR 14:020		See 41 Ky.R.	Amended	155	
As Amended	25		907 KAR 10:830		See 41 Ky.R.
702 KAR 7:065			AmComments	62	
Amended	101		910 KAR 1:270		
703 KAR 5:200		See 41 Ky.R.	Amended	161	
As Amended	26		922 KAR 1:310		
703 KAR 5:225		See 41 Ky.R.	Amended	170	
As Amended	29		922 KAR 1:340	216	
703 KAR 5:240		See 41 Ky.R.	922 KAR 1:350		
As Amended	33		Amended	184	
704 KAR 3:303			922 KAR 1:495	219	
Amended	104				
704 KAR 3:370		See 41 Ky.R.			
AmComments	38				
705 KAR 4:041					

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 1:310		922 KAR 1:340
	922 KAR 1:340		922 KAR 1:350
	922 KAR 1:350	198B.040	815 KAR 20:100
17.165	922 KAR 1:310	198B.050	815 KAR 20:100
17.500	922 KAR 1:310	199.011	922 KAR 1:310
18A.005	101 KAR 2:020		922 KAR 1:340
	101 KAR 2:056		922 KAR 1:350
18A.030	101 KAR 2:020		922 KAR 1:495
	101 KAR 2:034	199.430	922 KAR 1:310
	101 KAR 2:046		922 KAR 1:340
	101 KAR 2:066	199.464	922 KAR 1:495
18A.032	101 KAR 2:020	199.470	922 KAR 1:310
	101 KAR 2:046	199.492	922 KAR 1:310
18A.110	101 KAR 2:020	199.493	922 KAR 1:310
	101 KAR 2:034	199.510	922 KAR 1:310
	101 KAR 2:046	199.520	922 KAR 1:310
	101 KAR 2:056		
	101 KAR 2:066	199.555	101 KAR 2:120
	101 KAR 3:045		101 KAR 3:045
	803 KAR 2:317	199.570	922 KAR 1:310
	803 KAR 4:402	199.572	922 KAR 1:310
	803 KAR 2:421	199.590	922 KAR 1:310
	803 KAR 2:505	199.640	922 KAR 1:310
	803 KAR 2:200		922 KAR 1:340
	803 KAR 2:305		922 KAR 1:495
18A.120	101 KAR 2:046	199.645	922 KAR 1:310
	101 KAR 2:056	199.650-199.670	922 KAR 1:310
18A.150	101 KAR 2:046		922 KAR 1:340
18A.155	101 KAR 3:045	202A.011	922 KAR 1:350
18A.165	101 KAR 2:034	205.520	907 KAR 1:026
	101 KAR 2:066		907 KAR 1:626
18A.202	101 KAR 2:120	205.8451	907 KAR 1:026
	101 KAR 3:045	210.770-210.795	910 KAR 1:270
61.805-61.850	702 KAR 7:065	211	902 KAR 115:010
61.870	922 KAR 1:495	238.500-238.995	820 KAR 1:001
61.870-61.884	922 KAR 1:350	238.505	820 KAR 1:032
150.010	301 KAR 1:146		820 KAR 1:033
150.025	301 KAR 1:146	238.545	820 KAR 1:032
150.120	301 KAR 1:146		820 KAR 1:033
150.170	301 KAR 1:146	243.090	804 KAR 4:390
150.175	301 KAR 1:146	258.015	922 KAR 1:310
150.445	301 KAR 1:146	258.035	922 KAR 1:310
150.450	301 KAR 1:146	273.161	922 KAR 1:310
150.990	301 KAR 1:146	311.720	922 KAR 1:310
150.160	704 KAR 3:303		922 KAR 1:350
156.029	705 KAR 4:041		922 KAR 1:495
156.070	702 KAR 7:065	311.840	922 KAR 1:310
	704 KAR 3:303		922 KAR 1:350
156.095	16 KAR 2:020		922 KAR 1:495
156.802	705 KAR 4:041	314.011	922 KAR 1:310
158.135	922 KAR 1:310		922 KAR 1:350
	922 KAR 1:495		922 KAR 1:495
158.810	705 KAR 4:041	318.010	815 KAR 20:130
158.6451	704 KAR 3:303	318.015	815 KAR 20:130
158.6453	704 KAR 3:303		
160.290	704 KAR 3:303	318.130	815 KAR 20:060
160.380	702 KAR 7:065		815 KAR 20:100
160.445	702 KAR 7:065		815 KAR 20:130
161.020	16 KAR 2:020	318.150	815 KAR 20:060
	16 KAR 4:030		815 KAR 20:100
161.028	16 KAR 2:020		815 KAR 20:130
	16 KAR 4:030	310.200	815 KAR 20:130
161.030	16 KAR 2:020	338	803 KAR 2:421
	16 KAR 4:030	338.015	803 KAR 2:505
161.124	16 KAR 4:030	338.051	803 KAR 2:305
161.126	16 KAR 4:030		803 KAR 2:317
189.125	922 KAR 1:310	338.061	803 KAR 2:305
194A.005	922 KAR 1:495		803 KAR 2:317
194A.050	922 KAR 1:340	338.121	803 KAR 2:180
194A.060	910 KAR 1:270		803 KAR 2:250
	922 KAR 1:310	338.161	803 KAR 2:180

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
342	803 KAR 25:013		
342.125	803 KAR 25:008		
342.260	803 KAR 25:008		
342.265	803 KAR 25:008		
342.270	803 KAR 25:008		
342.300	803 KAR 25:008		
342.310	803 KAR 25:008		
342.315	803 KAR 25:008		
342.710	803 KAR 25:008		
342.715	803 KAR 25:008		
342.732	803 KAR 25:008		
342.760	803 KAR 25:008		
342.0011	803 KAR 25:008		
503.110	922 KAR 1:310		
527.100	922 KAR 1:310		
527.110	922 KAR 1:310		
600.020	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
	922 KAR 1:495		
605.090	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
610.110	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
610.125	922 KAR 1:310		
615.010-615.990	922 KAR 1:310		
620.030	922 KAR 1:310		
	922 KAR 1:350		
620.050	922 KAR 1:350		
620.090	922 KAR 1:310		
620.140	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
620.230	922 KAR 1:310		
620.360	922 KAR 1:350		
	922 KAR 1:495		
625	922 KAR 1:310		
	922 KAR 1:350		
16 C.F.R.	922 KAR 1:310		
	922 KAR 1:350		
29 C.F.R.	803 KAR 2:180		
42 C.F.R.	907 KAR 1:626		
45 C.F.R.	910 KAR 1:270		
	922 KAR 1:310		
	922 KAR 1:350		
	922 KAR 1:495		
8 U.S.C.	922 KAR 1:310		
	922 KAR 1:350		
20 U.S.C.	702 KAR 7:065		
42 U.S.C.	815 KAR 20:060		
	907 KAR 1:026		
	907 KAR 1:626		
	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
	922 KAR 1:495		

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

NONE

SUBJECT INDEX

AGING AND INDEPENDENT LIVING, DEPARTMENT OF

Aging Services

Hart-supported Living grant program; 910 KAR 1:270

ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF

Licensing

Renewals; 804 KAR 4:390

CHARITABLE GAMING, DEPARTMENT OF

Definitions; 820 KAR 1:001

Electronic pulltabs; 820 KAR 1:033

Pulltab construction; 820 KAR 1:032

COMMUNITY BASED SERVICES, DEPARTMENT FOR

Child Welfare

Child-placing agencies, standards for; 922 KAR 1:310

Family preparation: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:350

Independent living program standards; 922 KAR 1:340

Training requirements: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:495

CORRECTIONS, DEPARTMENT OF

Office of the Secretary

Probation and parole policies and procedures; 501 KAR 6:270

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Education; Kentucky Board of

Office of Instruction

Professional growth and effectiveness system; 704 KAR 3:370

School Terms, Attendance and Operation

Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

Required academic standards; 704 KAR 3:303

Office of Special Instructional Programs

Work-based learning program standards; 705 KAR 4:041

Workforce Development (*See Workforce Investment, Department of; KAR Title 787*)

EDUCATION PROFESSIONAL STANDARDS BOARD

Certification Procedures

Out-of-state educator preparation; 16 KAR 4:030

Teaching Certificates

Occupation-based career and technical education certification; 16 KAR 2:020

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF

Fish

Commercial fishing gear; 301 KAR 1:146

GENERAL GOVERNMENT CABINET

Real Estate Appraisers (*See Real Estate Appraisers Board*) 201 KAR Chapter 30

HEALTH AND FAMILY SERVICES, CABINET FOR

Aging and Independent Living (*See Aging and Independent Living, Department of*) KAR Title 910

Medicaid Services (*See Medicaid Services, Department for*) KAR Title 907

Public Health (*See Public Health, Department for*) KAR Title 902

JUSTICE AND PUBLIC SAFETY CABINET

Corrections (*See Corrections, Department of*) KAR Title 501

LABOR CABINET

Occupational Safety and Health

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

Confined spaces in construction; 803 KAR 2:200

Cranes and derricks in construction; 803 KAR 2:505

Discrimination; 803 KAR 2:250

Industries, special; 803 KAR 2:317

Powered platforms, manlifts, and vehicle-mounted platforms; 803 KAR 2:305

Recordkeeping; reporting; statistics; 803 KAR 2:180

Safety and health provisions, general; 803 KAR 2:402

Workers' Claims, Department of

Claims adjustments using Litigation Management Systems; 803 KAR 25:008

Repeal of 803 KAR 25:009 and 25:010; 803 KAR 25:013

MEDICAID SERVICES, DEPARTMENT FOR

Policy and Operations

Acute care inpatient hospital reimbursement; 907 KAR 10:830

Services

Dental

Coverage provisions and requirements; 907 KAR 1:026

Reimbursements; 907 KAR 1:626

NATURAL RESOURCES, DEPARTMENT OF

Oil and Gas

Commission's rules of procedure; 805 KAR 1:100

Reclamation plan, content of operations; 805 KAR 1:170

Wells

Casing, cementing, plugging, detection; 805 KAR 1:130

Directional and horizontal; 805 KAR 1:140

PERSONNEL CABINET

Classified

Applications, qualifications and examinations; 101 KAR 2:046

Certification, selection of applicants for appointment; 101 KAR 2:066

Classified compensation; 101 KAR 2:034

Incentive programs; 101 KAR 2:120

Job classification plan; 101 KAR 2:020

Registers; 101 KAR 2:056

Unclassified

Compensation plan and pay incentives; 101 KAR 3:045

PLUMBING, DIVISION OF

House sewers and storm water piping; installation; 815 KAR 20:130

Joints and connections; 815 KAR 20:100

Materials, quality and weight; 815 KAR 20:060

PUBLIC HEALTH, DEPARTMENT FOR

Maternal and Child Health, Division of

Water Fluoridation

Dental health protection; 902 KAR 115:010

PUBLIC PROTECTION CABINET

Charitable Gaming (*See Charitable Gaming, Department of*) KAR Title 820

Housing, Buildings and Construction; KAR Title 815

Plumbing (*See Plumbing, Division of*) 815 KAR Chapter 20

REAL ESTATE APPRAISERS BOARD

Grievances; 201 KAR 30:070

WORKFORCE INVESTMENT, DEPARTMENT OF

Office of Employment Training

Local workforce development area governance; 787 KAR 2:040

SUBJECT INDEX