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MEETING NOTICE: EAAARS
The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet October 20, 2015, at 10:00 a.m. in room 129 Capitol Annex.

MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet October 13, 2015, at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 1079-1082 of this Administrative Register. (**The time may be adjusted to 10:00 a.m. due to the number of administrative regulations on the agenda.)
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2015 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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Cabinet, Department, Office, Division, Board, or Agency Specific Board, or Major Function Specific Regulation

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**Please note that the time might be moved to 10:00 a.m., depending on the number of administrative regulations remaining on the agenda.**

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**Teaching Certificates**
- 16 KAR 2:100. Junior Reserve officers Training Corps certification.
- 16 KAR 2:140. Probationary certificate for teachers of children, birth to primary.
- 16 KAR 2:150. Probationary certificate for teachers of engineering and technology information.

**Administrative Certificates**
- 16 KAR 3:030. Professional certificate for directors and assistant directors of pupil personnel.
- 16 KAR 3:040. Director of special education.

**Alternative Routes to Certification**
- 16 KAR 9:030. Professional certificate for college faculty.

**DEPARTMENT OF MILITARY AFFAIRS**

**National Guard Tuition Award Program**
- 106 KAR 3:010. Kentucky National Guard Tuition Award Program.

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- 201 KAR 1:050. License application.
- 201 KAR 1:071. Repeal of 201 KAR 1:064.
- 201 KAR 1:081. Firm license, renewal, and reinstatement.
- 201 KAR 1:140. Procedures for the reinstatement or reissuance of CPA license.
- 201 KAR 1:150. Procedures for the dissemination of information relative to hearings held before the Kentucky State Board of Accountancy.

**Board of Optometric Examiners**
- 201 KAR 5:030. Annual courses of study required.
- 201 KAR 5:110. Expanded therapeutic procedures.

**PUBLIC PROTECTION CABINET**

**Office of Occupations and Professions**

**Board of Licensure for Long-term Care Administrators**

**GENERAL GOVERNMENT CABINET**

**Board of Medical Licensure**
- 201 KAR 9:305. Continued licensure of athletic trainers. (Deferred from September)
- 201 KAR 9:310. Continuing medical education. (Deferred from September)

**Real Estate Commission**
- 201 KAR 11:170 & E. Real estate school and pre-license course approval. ("E" expires 12/26/2015) (Amended After Comments)
- 201 KAR 11:175 & E. Instructor approval procedures and guidelines. ("E" expires 12/26/2015) (Deferred from September)
- 201 KAR 11:195. Informal settlement procedures. (Deferred from September)
- 201 KAR 11:210. Licensing, education, and testing requirements. (Deferred from September)
- 201 KAR 11:220. Continuing education provider requirements. (Deferred from September)
- 201 KAR 11:232. Continuing education provider requirements. (Amended After Comments)
- 201 KAR 11:235 & E. Post-license education requirements. ("E" expires 12/26/2015) (Amended After Comments)
- 201 KAR 11:240 & E. Distance education requirements. ("E" expires 12/26/2015) (Not Amended After Comments)
- 201 KAR 11:460. Minimum rating requirements for instructors. (Deferred from September)

**Board of Licensure for Professional Engineers and Land Surveyors**
- 201 KAR 18:104. Seals and signatures.

**Board of Licensure for Marriage and Family Therapist**
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

201 KAR 32:035. Supervision of marriage and family therapist associates.
201 KAR 32:045. Examination.

Board of Licensed Professional Counselors

Board

Board of Interpreters for the Deaf and Hard of Hearing

Board
201 KAR 39:030. Application; qualifications for licensure; and certification levels.

Applied Behavior Analysis Licensing Board

Board
201 KAR 43:010. Application procedures for licensure.
201 KAR 43:020. Application procedures for temporary licensure.
201 KAR 43:050. Requirements for supervision.
201 KAR 43:080. Renewals.

Board of Medical Imaging and Radiation Therapy

Board
201 KAR 46:010. Definitions for 201 KAR Chapter 46. (Amended After Comments) (Deferred from August)
201 KAR 46:020. Fees. (Not Amended After Comments) (Deferred from August)
201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists. (Amended After Comments) (Deferred from August)
201 KAR 46:040. Medical imaging technologist, advanced imaging professional and radiation therapist licenses. (Amended After Comments) (Deferred from August)
201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists. (Amended After Comments) (Deferred from August)
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201 KAR 46:060. Continuing education requirements. (Not Amended After Comments) (Deferred from August)
201 KAR 46:070. Violations and enforcement. (Deferred from June)
201 KAR 46:081. Limited x-ray machine operator. (Not Amended After Comments) (Deferred from August)

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

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503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

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Department of Education

General Admission
702 KAR 1:170. School district data security and breach procedures.

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Charitable Gaming
820 KAR 1:001. Definitions for 820 KAR Chapter 1. (Not Amended After Comments) (Deferred from September)
820 KAR 1:032. Pulltab construction. (Not Amended After Comments) (Deferred from September)
820 KAR 1:033. Electronic pulltab system, electronic pulltab device, and electronic pulltab construction. (Not Amended After Comments) (Deferred from September)

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Office of Inspector General
Division of Health Care

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)
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Division of Policy and Operations

Medicaid Services
907 KAR 1:026. Dental services’ coverage provisions and requirements. (Amended After Comments)

Division of Community Alternatives

Medicaid Services
907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expired 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 1:595. Model Waiver II service coverage and reimbursement policies and requirements.
907 KAR 1:626. Reimbursement of dental services. (Amended After Comments)
907 KAR 1:835. Michelle P. waiver services and reimbursements.

Payment and Services
907 KAR 3:090. Acquired brain injury waiver services.

Hospital Service Coverage and Reimbursement
907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services. (Amended After Comments)
(Deferred from August)
907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services. (Not Amended After Comments.) (Deferred from August)

Supports for Community Living Waiver
907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies.

Department for Community Based Services
Division of Family Support

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from September)
921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from September)
921 KAR 2:017. Kentucky Works Program (KWP) supportive services. (Deferred from September)
921 KAR 2:046. Adverse action; conditions. (Deferred from September)
921 KAR 2:050. Time and manner of payments. (Deferred from September)
921 KAR 2:055. Hearings and appeals. (Amended After Comments)
921 KAR 2:060. Delegation of power for oaths and affirmations. (Amended After Comments)
921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP). (Deferred from September)
921 KAR 2:500. Family Alternatives Diversion (FAD). (Deferred from September)
921 KAR 2:510. Relocation Assistance Program. (Deferred from September)
921 KAR 2:520. Work Incentive or “WIN”. (Deferred from September)

Department for Community Based Services
Division of Family Support

Supplemental Nutrition Assistance Program
921 KAR 3:035. Certification process. (Deferred from September)
921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program. (Deferred from September)
921 KAR 3:050. Claims and additional administrative provisions. (Deferred from September)
921 KAR 3:090 & E. Simplified assistance for the elderly program or “SAFE”. ("E" expires 12/29/2015) (Deferred from September)

Division of Protection and Permanency

Child Welfare
922 KAR 1:310. Standards for child-placing agencies. (Amended After Comments)
922 KAR 1:340. Standards for independent living programs. (Amended After Comments)
922 KAR 1:350. Family preparation for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Amended After Comments)
922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Amended After Comments)

AUTOMATICALLY REMOVED FROM THE OCTOBER AGENDA

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Board of Pharmacy

Board
201 KAR 2:220. Collaborative care agreements. (Comments Received)

Board of Examiners of Psychology

Board
201 KAR 26:115. Psychological testing. (Comments Received)
201 KAR 26:121. Scope of practice and dual licensure. (Comments Received)
201 KAR 26:175. Continuing education. (Comments Received)
201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychology for meeting education requirements for licensure as a licensed psychologist. (Comments Received)

Board of Licensure for Marriage and Family Therapist

Board
201 KAR 32:060. Continuing education requirements. (Comments Received)
Board of Licensed Diabetes Educators

201 KAR 45:110. Supervision and work experience. (Comments Received)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

Water Quality Standards
401 KAR 10:026. Designation of uses of surface waters. (Comments Received)
401 KAR 10:029. General provisions. (Comments Received)
401 KAR 10:030. Antidegradation policy implementation methodology. (Comments Received)
401 KAR 10:031. Surface water standards. (Comments Received)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:050. Luther Luckett Correctional Complex. (Comments Received)

Department of Juvenile Justice

Child Welfare
505 KAR 1:100 & E. Department of Juvenile Justice Policies and Procedures: admissions. ("E" expires 1/27/2016)(Comments Received, SOC ext., due 10/15/15)
505 KAR 1:110 & E. Department of Juvenile Justice Policy and Procedures Manual: program services. ("E" expires 1/27/2016)(Comments Received, SOC ext., due 10/15/15)
505 KAR 1:130 & E. Department of Juvenile Justice Policies and Procedures: juvenile services in community. ("E" expires 1/27/2016)(Comments Received, SOC ext., due 10/15/15)

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

Motor Carriers
601 KAR 1:113 & E. Transportation network company. ("E" Expires 1/4/2016) (Comments Received)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Charitable Gaming
820 KAR 1:005. Exempt Organizations. (Comments Received)
820 KAR 1:015. Issuance of annual license for a charitable organization. (Comments Received)
820 KAR 1:016. Distributor and manufacturer licensees. (Comments Received)
820 KAR 1:017. Licensing inspections. (Comments Received)
820 KAR 1:025. Financial reports of a licensed charitable organization. (Comments Received)
820 KAR 1:027. Quarterly reports of a licensed distributor and a licensed manufacturer. (Comments Received)
820 KAR 1:029. Facility licensees. (Comments Received)
820 KAR 1:034. Pulltab dispenser construction and use. (Comments Received)
820 KAR 1:036. Pulltab rules of play. (Comments Received)
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820 KAR 1:046. Bingo rules of play. (Comments Received)
820 KAR 1:050. Raffle standards. (Comments Received)
820 KAR 1:055. Charity fundraising event standards. (Comments Received)
820 KAR 1:056. Special limited charity fundraising event standards. (Comments Received)
820 KAR 1:057. Accurate records. (Comments Received)
820 KAR 1:058. Gaming occasion records. (Comments Received)
820 KAR 1:120. Allowable expenses. (Comments Received)
820 KAR 1:125. Gaming inspections. (Comments Received)
820 KAR 1:130. Administrative actions. (Comments Received)

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Office of Health Policy

Certificate of Need
900 KAR 6:055. Certificate of need forms. (Comments Received)
900 KAR 6:070. Certificate of need considerations for formal review. (Comments Received)
900 KAR 6:075. Certificate of need nonsubstantive review. (Comments Received)
900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing. (Comments Received)

Department for Aging and Independent Living
Division of Quality Living

Aging Services
910 KAR 1:240. Certification of assisted-living communities. (Comments Received)
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.
STATEMENT OF EMERGENCY
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2016 plan year handbook for the self-insured plan offered to the Public Employee Health Insurance Program, commonly known as the Kentucky Employees’ Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a). KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan. The 2016 plan year handbook, or Benefits Selection Guide, contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2015 plan year. The existing language in the Benefits Selection Guide for the 2015 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2016 replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor
TIM LONGMEYER, Secretary

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)


RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

EFFECTIVE: September 15, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2015 and 2016 Plan Years[Year] as required by KRS 18A.2254(1)(a)(1). Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2015 Plan Year Kentucky Employees’ Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2016 Plan Year Kentucky Employees’ Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2016 Plan Year Kentucky Employees’ Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2016.

Section 3. Incorporation by Reference. (1) The following material 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, 3rd Floor, Frankfort, Kentucky 40601. Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary of Personnel Cabinet
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 15, 2015 at 9 a.m.
CONTACT PERSON: Sharron Burton, Deputy Executive Director, 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: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2016 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2016.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2016 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2016 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254(1), the statute authorizing the self-insured plan and the statute mandating the promulgation of the administrative regulation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2015 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2015. The amendment adds and incorporates by reference the 2016 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees under the self-insured plan for plan year 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance and deductibles for each plan provided to public employees under the Public Employee Health Insurance Program for plan year 2016. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insure plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2016 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2016 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 193,333 employees and non-employees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 298,530 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

(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 by affected entities to comply with the incorporation of the 2016 plan year handbook in the administrative regulation. The 2016 Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health plans offered for the 2016 plan year. Specifically, the 2016 plan year handbook will provide information about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2016 plan year.

(b) In completing this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will give notice to participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program regarding employer and employee premium contributions for health insurance coverage in 2016. There is no direct cost impact resulting from incorporating the 2016 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2016, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. The Public Employee Health Insurance Program will have minor employer contribution adjustments for plan year 2016. Plan year 2016 will have a two percent budgeted employer contribution increase. There will be no employee contribution adjustments for plan year 2016.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be affected by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards or school districts) for the first full year the administrative regulation is to be in effect:

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, school boards or school districts) for the first year? The administrative regulation will not generate any
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revenues.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenues.
(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.
(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2016 and each subsequent plan year.

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

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

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 35:010E

This emergency regulation establishes the definitions for 201 KAR Chapter 35. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Emergency Administrative Regulation)

201 KAR 35:010E. Definitions for 201 KAR Chapter 35.

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089

STATUTORY AUTHORITY: KRS 309.0813(1)

EFFECTIVE: August 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813 requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations for alcohol and drug counselors and peer support specialists. This administrative regulation establishes definitions of terms used by the board in administrative regulations pertaining to the credentialing of alcohol and drug counselors and peer support specialists.

Section 1. (1) "Academic course" means a course that is offered by a postsecondary institution accredited by a recognized accreditation agency and that is:
(a) An alcohol and drug counseling course, designated by title or content; or
(b) An academic course, relevant to alcohol and drug counseling.
(2) "Applicant" means an individual who has applied for registration, certification, or licensure in accordance with KRS 309.084 or a credential holder renewing his application in accordance with KRS 309.085.
(3) "Approved" means recognized by the Kentucky Board of Alcohol and Drug Counselors.

(4) "Board" is defined by KRS 309.080(1).
(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
(6) "Chair" means the chairperson or vice-chairperson of the board.
(7) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (12) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or another state or federal statute or regulation.
(8) "Classroom hour" means an academic hour from an accredited institution or continuing education hour.
(9) "Client" means an individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist; a corporate entity or other organization if the contract is to provide an alcohol and drug counselor or peer support specialist service of benefit directly to the corporate entity or organization; or a legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.
(10) "Clinical supervision" means a disciplined, tutorial process wherein principles are transformed into practical skills, with four (4) overlapping foci: administrative, evaluative, clinical, and supportive.
(11) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of postcredential experience and who provides supervision and whose credential is currently in good standing with the board.
(12) "Complaint" means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:
(a) KRS Chapter 309;
(b) Administrative regulations promulgated in accordance with KRS Chapter 309;
(c) Another state or federal statute or regulation;
(d) A combination of paragraphs (a), (b), or (c) of this subsection.

(13) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.
(14) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing education experience.
(15) "Credential holder" is defined by KRS 309.080(3).
(16) "Disciplinary action" means to revoke, suspend, place on probation, or restrict the credential holder; and publicly reprimand, publicly admonish, or fine.
(17) "Educational program" means an organized learning experience:
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or in a series.
(18) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.
(19) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.
(20) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
(21) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
(22) "Licensee" is defined by KRS 309.080(6).
(23) "Provider" means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.
(24) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).
(25) "Registrant" is defined by KRS 309.080(9).
(26) "Relevant" means having content applicable to the practice of alcohol and drug counseling in accordance with the
requirements of Section 4(2) of this administrative regulation.

(27) “Work experience” means the hours spent performing the services, tasks, and reports necessary for providing counseling or intervention or support services to a person with a substance use disorder or that person's significant others.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator,
Division of Occupations and Professions, 911 Leawood Drive,
Frankfort, KY, 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 35.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 35.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 35.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 35.

(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either:

the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(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 and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(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. 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:
STATEMENT OF EMERGENCY
201 KAR 35:015E

This emergency regulation establishes a one (1) year period of time for a current certified alcohol and drug counselor to satisfy all the requirements for licensure as a clinical drug and alcohol counselor. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEoffrey Wilson, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Emergency Administrative Regulation)

201 KAR 35:015E. Grandparenting of Certification to Licensure.

RELATES TO: KRS 309.084(2)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.084(2)(a)

EFFECTIVE: August 25, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations. KRS 309.084(2)(a) requires the board to promulgate an emergency regulation: The board is unable to determine the necessary administrative action required for 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 be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is that KRS 309.084(2)(a) requires the board to promulgate administrative regulations establishing a limited period of time, not less than ninety (90) days nor more than one (1) year, during which licensure may be extended to persons not meeting all the requirements for licensure as a clinical drug and alcohol counselor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the grandfathering of current certified individuals to licensure.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for a certified alcohol and drug counselor to apply for a license as a clinical drug and alcohol counselor.

(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will have to submit an application for licensure to demonstrate the applicant satisfies the licensure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to pay a fee for licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A certificate holder may become licensed and be able to bill for services rendered from various third party payors and eventually Medicaid.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:
There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (5), 309.084(2)(a).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many of its current certificate holders qualifies for licensure.

   (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 will it cost to administer this program for subsequent years? None.

   (c) How much will it cost to administer this program for subsequent years? 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 (+//-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 35:020E

This emergency regulation establishes the registration, certification, and licensure fees, renewal fee, examination fee, late fee, and fees for services provided by the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET

Board of Alcohol and Drug Counselors

(New Emergency Administrative Regulation)

201 KAR 35:020E. Fees.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

EFFECTIVE: August 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination and oral examination which applicants for certification shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate an administrative regulation establishing an initial registration, certification, or licensure fee and renewal fee. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the Application for a Licensed Clinical Alcohol and Drug Counselor, Licensed Clinical Alcohol and Drug Counselor Associate, Certified Alcohol and Drug Counselor, or Registered Alcohol and Drug Peer Support Specialist/Certification as an Alcohol and Drug Counselor shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application for Certification as an Alcohol and Drug Counselor shall lapse and the fee shall be forfeited if the application packet is not completed within one (1) year from the date it is filed with the board office.

(4)(a) If an approved applicant does not successfully complete the examination required by the board for credentialing/certification within two (2) years from the date the original application form is filed with the board, the applicant shall update and reschedule the examination and the fee for retaking the examination shall be the same as the fee established in subsections (1) and (2) of this section, and shall accompany the Application for Re-examination.

(b) The fee for retaking the application formal shall be twenty (20) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the examinations required by the board through December 31, 2008:

(1) The fee for the written examination shall be $100.

(2)(a) The fee for the oral examination shall be $125.

(b) In the event the oral examination is rescheduled at the request of the applicant, a twenty-five (25) dollar fee shall be paid prior to rescheduling of the examination.

(3) The fee for retaking either portion of the examination shall be the same fee established in subsections (1) and (2) of this section, and shall accompany the Application for Re-examination.

(4) Applicants shall have the option to sit for the comprehensive examination offered by the International Certification and Reciprocity Consortium by paying the fees established in Section 3 of this administrative regulation.

Section 3. Comprehensive Examination Fee. (1)(a) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $150. The fee for retaking the comprehensive examination shall be $150.

(b) An applicant [elective January 1, 2009] for certification shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $200(450). The fee for retaking the comprehensive examination shall be $200.

(3) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $200. The fee for retaking the comprehensive examination shall be $200(2).
Section 3. Credentialing[4. Initial Certification] Fee. (1)(a) The registration fee for an alcohol and drug peer support specialist shall be $100.

(b) The initial certification fee for a certified alcohol and drug counselor shall be $200 for an applicant for certification.

c. The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be $300.

(2) If the applicant successfully completes all requirements for registration, certification, or licensure, the fee established in subsection (1) of this section shall cover credentialing for the initial three (3) year period.

Section 4. [5.] Renewal Fees and Penalties. (1)(a) A registration, certificate, or license not renewed within ninety (90) days after the holder’s renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled registration shall not use the title “registered alcohol and drug peer support specialist” or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(c) A person holding a cancelled certificate shall not use the title “certified alcohol and drug counselor” or hold himself or herself out as a certified alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(d) A person holding a cancelled license shall not use the title “licensed clinical alcohol and drug counselor” or hold himself or herself out as a licensed clinical alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(e) A person holding a cancelled license as a licensed clinical alcohol and drug counselor associate shall not use the title “licensed clinical alcohol and drug counselor associate” or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

(2) The following fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewals.

(a) The renewal fee for registration shall be $100 for a three (3) year period, and shall accompany the Renewal Application.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $150 for registration for a three (3) year period.

(c) The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the Renewal Application.

(d) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $250 for certification for a three (3) year period.

(e) The renewal fee for licensure shall be $300 for a three (3) year period, and shall accompany the Renewal Application.

(f) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $350 for licensure for a three (3) year period.

Section 5. Reinstatement of a Canceled Registration, Certificate, or License. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Reinstatement Application;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of ten (10) hours of continuing education during the one (1) year period; and

(c) Payment of a $200 reinstatement fee for registration for a three (3) year period.

(2) A canceled certificate may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Reinstatement Application;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and

(c) Payment of a $300 reinstatement fee, for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Reinstatement Application;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and

(c) Payment of a $400 reinstatement fee for licensure for a three (3) year period.

(2) The applicant for reinstatement of a canceled certificate shall submit proof of completion of twenty (20) hours of continuing education for each year since the date of last active certification.


(2) The fee for a duplicate ID card shall be ten (10) dollars.

Section 7. Inactive Status Fee. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license[certificates] enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3)(a) The fee for reactivation of a registration shall be $100 for a three (3) year period commencing on the date the board approves the application for reactivation.

(b) The fee for reactivation of a certificate shall be $200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(c) The fee for reactivation of a license shall be $300 for a three (3) year period commencing on the date the board approves the application for reactivation.

Section 8. Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be defined as an individual or entity that provides a program of continuing education to credential[certificate] holders which has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be $250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of $150.

(6)(a) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the extent of a pre-approved workshop or program which is in excess of twenty (20) percent.

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

(a) “KBADC Form 1, Application”, June 2015[“Application for Certification as an Alcohol and Drug Counselor” (2008)];

(b) “KBADC Form 16, Application for Renewal”, June 2015[“Application for Re-Examination”, 2008];

(c) “KBADC Form 17, Application for Reinstatement”, June 2015[“Renewal Application”, 2008];

(d) “KBADC Form 19, Re-Examination Application”, June 2015[“Reinstatement Application”, 2001]; and

(e) “Continuing Education Sponsor Application”, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board...
of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky; telephone (502) 564-3296, ext. 222], Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential and ID, inactive status, and continuing education.
(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, licensee and applicant of fees to be assessed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees to be assessed for the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential and ID, inactive status, and continuing education.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment removes the oral examination fee since the oral examination is no longer administered. It also establishes fees associated with the registration of peer support specialists, and licensure of alcohol and drug counselors and alcohol and drug counselor associates.
(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish fees for licensure and other services provided by the board.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.
(d) How the amendment will assist in the effective administration of the statutes: This regulation will notify the credential holders and public of the fees, and provide funding for the board.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(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: An application and credential holder shall pay a fee associated with the credential or services sought.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation establishes new fees and increases other fees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and credential holders on clear notice of the fees associated with their credential and services provided.
(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 and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is one increase in fees or funding is required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish new fees or directly or indirectly increase any fees. The new increase is the comprehensive examination fee for certification increasing from $150 to $200 because of an increase in the fee charged the board by the International Certification and Reciprocity Consortium. The regulation also establishes new fees associated with the new credentials for the registration of peer support specialists, and licensure of alcohol and drug counselors and alcohol and drug counselor associates. The new fees for the registration of peer support specialists are $100 less than those to be assessed for the certification of an alcohol and drug counselor. The new fees for the licensure of alcohol and drug counselors and alcohol and drug counselor associates are $100 more than those to be assessed for the certification of an alcohol and drug counselor.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (12), 309.085.
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? The board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.
(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 board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.
(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 narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): +
STATEMENT OF EMERGENCY
201 KAR 35.03(30E)

This emergency regulation establishes the code of ethics for individuals who have been issued a registration, certification, and licensure by the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35.03(30E). Code of Ethics.

RELATES TO: KRS 309.081
STATUTORY AUTHORITY: KRS 309.0813(2)
EFFECTIVE: August 25, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1005(14) requires the board to promulgate a code of ethics for credential holders [certified alcohol and drug counselors]. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A credential holder [an alcohol and drug counselor] shall:
(a) Advance and protect the welfare of the client;
(b) Respect the rights of a person seeking assistance; and
(c) Make reasonable efforts to ensure that services are used appropriately.
(2) If an alcohol and drug peer support specialist is employed by a facility or credential holder from whom the peer support specialist received services as a client, the peer support specialist’s supervisor shall clearly define the relationship and boundaries of the peer support specialist’s employment position.
(3) A credential holder [an alcohol and drug counselor] shall not:
(a) Discern against or refuse professional service to anyone on the basis of:
1. Race;
2. Gender;
3. Age;
4. Sexual preference or orientation;
5. Religion; or
6. National origin;
(b) Exploit the trust and dependency of a client or client of the facility where the counselor provides alcohol and drug counseling or any other service or where the peer support specialist provides services;
(c) Engage in a dual relationship with a client or client of the facility where the counselor provides alcohol and drug counseling or any other service or where the peer support specialist provides services, including a social, business, or personal relationship, that may:
1. Impair professional judgment;
2. Incur a risk of exploitation of the client; or
3. Otherwise violate a provision of this administrative regulation.
If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur. A credential holder shall not engage in a romantic relationship or sexual intimacy with a member of a client’s immediate family or client’s romantic partner.
(d) Engage in a sexual relationship with a current client or current client of the facility where the counselor provides alcohol and drug counseling or with a former client or former client of the facility where the counselor provides alcohol and drug counseling for two (2) years following the termination of therapy;
(e) Use the professional relationship with a client or current client of the facility where the counselor provides alcohol and drug counseling to further an institutional or a personal interest;
(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;
(g) Fail to assist a person in obtaining other therapeutic service if the counselor is unable or unwilling, for an appropriate reason, to provide professional help;
(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;
(i) Videotape, record, or permit third-party observation of a therapy session without having first obtained written informed consent from the client;
(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or ethical proceeding; or
(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A credential holder [an alcohol and drug counselor] shall respect and guard the confidence of each individual client in any setting and through any means of communication.
(2) A credential holder [an alcohol and drug counselor] shall not disclose a client confidence except:
(a) As mandated, or permitted by law;
(b) To prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the counseling, at which the alcohol and drug counselor is a defendant; or
(d) In accordance with the terms of a written informed consent agreement.
(3) An alcohol and drug counselor may use client or clinical material in teaching, writing, and public presentations if:
(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect client identity and confidentiality.
(4) A credential holder shall maintain a client’s record for no less than seven (7) years from termination of services with the client.
(5) A credential holder [an alcohol and drug counselor] shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. A credential holder [an alcohol and drug counselor] shall assign credit to all who have contributed to the published material and for the work upon which publication is based. A credential holder [an alcohol and drug counselor] shall:
(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principal (principal) contribution to a publication shall be identified as the first listed;
(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance;
(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.

Section 4. Professional Competence and Integrity. A credential
An alcohol and drug counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

1. Having been subject to disciplinary action by another state's regulatory agency that the board determines is applicable to the practice of alcohol and drug counseling;
2. Impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impacts the practice of alcohol and drug counseling or peer support services;
3. Refusing to comply with an order issued by the board; or
4. Failing to cooperate with the board by not:
   a. Furnishing in writing a complete explanation to a complaint filed with the board;
   b. Appearing before the board at the time and place designated; or
   c. Properly responding to a subpoena issued by the board.

5. A credential holder [An alcohol and drug counselor] who is aware of conduct by another credential holder that violates this code of ethics shall report that conduct to the Kentucky Board of [Certification of] Alcohol and Drug Counselors.

6. A credential holder shall comply with all the policies and procedures of the facility where a credential holder is employed. If there is conflict with the policies or procedures of the facility and this code of ethics, the credential holder shall report this conflict to the Kentucky Board of [Certification of] Alcohol and Drug Counselors.

Section 5. Responsibility to a Student or Supervisee. A credential holder shall:

1. Be aware of his influential position with respect to a student or supervisee.
2. Avoid exploiting the trust and dependency of a student or supervisee.
3. Try to avoid a social, business, personal, or other dual relationship that could:
   a. Impair professional judgment; and
   b. Increase the risk of exploitation;
4. Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;
5. Not provide counseling to a:
   a. Student;
   b. Employee; or
   c. Supervisee;
6. Not engage in sexual intimacy or contact with a:
   a. Student; or
   b. Supervisee;
7. Not permit a student or supervisee to perform or represent oneself as competent to perform a professional service beyond his level of:
   a. Training;
   b. Experience; or
   c. Competence;
8. Not disclose the confidence of a student or supervisee unless:
   a. Permitted or mandated by law;
   b. It is necessary to prevent a clear and immediate danger to a person;
   c. During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the alcohol and drug counselor is a defendant;
   d. In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee;
   e. In accordance with the terms of a written informed consent agreement.

Section 6. Responsibility to a Research Participant. A credential holder performing research shall comply with federal and state laws and regulations and professional standards governing the conduct of research.

1. A credential holder shall:
   a. Be responsible for making a careful examination of ethical acceptability in planning a study;
   b. Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and
   c. Observe safeguards to protect the rights of a participant.
2. A credential holder requesting a participant's involvement in research shall:
   a. Inform the participant of all aspects of the research that might reasonably affect the participant's willingness to participate; and
   b. Be sensitive to the possibility of diminished consent if the participant:
      1. Is also receiving clinical services;
      2. Has an impairment which limits understanding or communication; or
      3. Is a child.
3. A credential holder performing research shall respect a participant's freedom to decline participation in or to withdraw from a research study at any time.

4. A credential holder shall avoid a dual relationship with research participants.

5. Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. The following shall be explained to the participant before obtaining written, informed consent:
   a. A risk that another person, including a family member, could obtain access to the information; and
   b. The plan to be used to protect confidentiality.

Section 7. Financial Arrangements. A credential holder shall:

1. Not charge an excessive fee for service;
2. Disclose fees to a client and supervisee at the beginning of service;
3. Make financial arrangements with a client, third-party payor, or supervisee that:
   a. Are reasonably understandable; and
   b. Conform to accepted professional practices;
4. Not offer or accept compensation for a referral of a client;
5. Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered; and
6. Not trade services to the client in exchange for goods or services provided by or on behalf of the client.

Section 8. Advertising. A credential holder shall:

1. Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;
2. Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
   a. A business card;
   b. An office sign;
   c. Letterhead;
   d. Telephone or association directory listing; or
   e. Webpage or social media.
3. A statement shall be considered false, fraudulent, misleading, or deceptive if it:
   a. Contains a material misrepresentation of fact;
   b. Is intended to or likely to create an unjustified expectation;
   c. Deletes a material fact or information.

Section 9. Environment. A credential holder shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This shall
include the following:
(1) Allowance for privacy and confidentiality; and
(2) Compliance with any other health and safety requirement according to local, state, and federal agencies.


Section 11. Interprofessional Relationships. A credential holder [An alcohol and drug counselor] shall treat a colleague with respect, courtesy, and fairness and shall afford the same professional courtesy to other professionals. (1) A credential holder [An alcohol and drug counselor] shall not offer professional service to a client in counseling with another professional unless efforts have been made to inform [except with the knowledge of] the other professional, or to establish collaborative treatment or until after the termination of the client's relationship with the other professional.
(2) A credential holder [An alcohol and drug counselor] shall cooperate with a duly constituted professional ethics committee and promptly supply necessary information unless constrained by the demands of confidentiality.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for a credential holder.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.
(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the expected ethical behavior of a credential holder and protect the public seeking alcohol and drug related services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will hold the new credentials established through the legislation enacted during the 2015 legislative session. They also will prohibit sexual relationships with current and former clients.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a code of ethics for a credential holder with a registration or license issued by the board. They are also necessary to protect a peer support specialist who was a former client of a facility or credential holder and is now employed by the same.
(c) How the amendment conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a code of ethics for all credential holders.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the code of ethics or be subject to possible disciplinary action.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no known new costs associated with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The credential holders will know the ethical standards expected of them by the board.
(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 and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (2).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
STATEMENT OF EMERGENCY

201 KAR 35:040E

This emergency regulation establishes the continuing education requirements for individuals who have been issued a registration, certification, or licensure by the board. Specifically, in part, the emergency regulation notifies a credential holder the requirements to satisfy the continuing education in suicide assessment, treatment, and management under KRS 210.366. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. Therefore, the requirements shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVIE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:040E. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)
STATUTORY AUTHORITY: KRS 309.0813(2)
EFFECTIVE: August 25, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.085(1)(b) authorizes the board to require a credential holder to complete continuing education requirements as a condition of renewal of certification. This emergency regulation replaces the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) “Academic course” means a course offered by an accredited postsecondary institution beyond the undergraduate level, that is:
(a) An alcohol and drug counseling course, designated by title or content; or
(b) An academic course, relevant to alcohol and drug counseling.
(2) “Approved” means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.
(3) “Continuing education hour” means fifty (50) clock minutes of participation in a continuing educational experience.
(4) “Program” means an organized learning experience;
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or in a series.
(5) “Provider” means an organization approved by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors for providing continuing education programs.
(6) “Relevant” means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of Section 2(3) of this administrative regulation.

Section 2. Basic Continuing Education Requirements. (1) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a certificate or drug counselor certificate during the three (3) year certification period for renewal with at least three (3) continuing education hours being on ethics.
(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours being on ethics.
(d) A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.
(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.
(3) (All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a certificate.) A credential holder shall determine prior to attending a specific continuing education program that the program:
(a) Has been approved by the board; or
(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.
(4) If the specific continuing education program is not approved as established in subsection (3) of this section, the certificate holder may apply for board approval by providing the information required by Section 4(a) of this administrative regulation.
(5) A credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(2) of this administrative regulation, or be approved by one (1) of the following boards:
(a) Kentucky Board of Social Work;
(b) Kentucky Board of Licensure of Marriage and Family Therapists;
(c) Kentucky Board of Licensed Professional Counselors;
(d) Kentucky Board of Licensure for Pastoral Counselors;
(e) Kentucky Board of Examiners of Psychology; or
(f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours.
(1) Continuing education hours applicable to the renewal of the credential certificate shall be directly related to the professional growth and development of a credential holder.
(b) Continuing education hours may be earned by:
(a) Attending a continuing education program that has prior approval by the board;
(b) The completion of appropriate academic coursework; or
(c) Other alternative methods approved by the board in accordance with subsection (5) of this section.
(3) The required continuing education hours for a credential holder shall be not less than fifty (50) percent face to face of the required continuing education hours.
(3) Attendance at continuing education programs automatically approved by the board. A program provided, approved, or sponsored by any of the following providers and that is relevant to the practice of alcohol and drug counseling shall be deemed to be approved without further review by the board and shall [be] exempt from the program fee established in 201 KAR 35:020.

Section 9:
(a) The National Association of Addiction Professionals (NAADAC) and its member boards;
(b) The International Certification and Reciprocity Consortium (ICRC);
(c) The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;
(d) The Kentucky School of Alcohol and Drug Studies; 
(e) An Addiction [Addiction] Technology Transfer Center (ATTC); and
(f) State or United State Regional Addiction Training Institute; or
(g) Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA).

(4)(a) Academic coursework. An academic course, as defined in Section 1(1) of this administrative regulation, shall not require board review or approval.

(b) A general education course, or elective designated to meet academic [undergraduate] degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(5) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board to determine whether or not the program complies with the requirements of Section 3(2)(4)(2) of this administrative regulation:

(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (3) of this section;

(b) A program or academic course presented by the credential [certificate] holder.

1. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction.

2. Credit shall not be issued for repeated instruction of the same course;

(c)1. A relevant publication in a professionally recognized or juried publication authored by the credential [certificate] holder.

2. Continuing education hours shall be granted for relevant publications as follows:

a. Five (5) continuing education hours for each published abstract or book review in a refereed journal;

b. Ten (10) continuing education hours for each book chapter or monograph;

c. Fifteen (15) continuing education hours for each published article in a refereed journal; and

d. Twenty (20) continuing education hours for each published book.

Section 3(4)[4]. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days [sixty (60) days] in advance of the commencement of the program, and shall provide the information required in Section 4(5) of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the credential [certificate] holder by:

   1. Refreshing knowledge and skills; or
   2. Educating on a new topic or subject; and

   (d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licenses or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4(5). Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Application for continuing education credits approval.

Section 5(6). Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application incorporated by reference in 201 KAR 35:020[shall], and pay the provider fee established in 201 KAR 35:020, Section 9.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as pre-approved to meet the continuing education requirements for credential [certificate] renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6(2). Responsibilities and Reporting Requirements of Credential [Certificate] Holder. Audit. (1)(a) During the certification renewal period, the board shall review at least [require up to] fifteen (15) percent of all credential holders [certificate holders] documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential [certificate] holder shall:

(a) Be responsible for obtaining the required continuing education hours;

(b) Identify personal continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 2(4)[2(4)] of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(f) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board

(a) Refusal to renew credential [certification];

(b) Suspension of credential [certification]; or

(c) Revocation of credential [certification].

Section 7(8). Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those
required pursuant to Section 1 [2] of this administrative regulation shall not be carried forward into the immediately following certification renewal period).

Section 8 [9]. Appeal of Denial of Continuing Education Hours by the Board. (1) If an application for approval of continuing education hours is denied, the certificate holder shall have the right to appeal the board's decision.
(2) An appeal shall be:
(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 10. [10] Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
(a) Medical disability of the credential holder;
(b) Illness of an immediate family member; or
(c) Death or serious injury of an immediate family member.
(2) A written request for waiver or extension of time involving medical disability or illness shall be:
(a) Submitted by the certificate holder; and
(b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.
(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the credential holder shall reapply for the waiver or extension.

Section 9. [11] Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification or licensure shall:
(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
(b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification or licensure.
2. Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification or licensure.
(2) A person requesting reinstatement of a registration shall:
(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
(b)1. Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.
2. Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.
[3] The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 12 [9] of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. [12] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Continuing Sponsor Application Form", [2008][1]
(b) "KBACD Form 1B, Continuing Education Program Application", June 2015[2009][1]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296 ext. 222, Monday through Friday, 8:30 a.m. to 5:00 p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute giving the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the continuing education requirements of a credential holder and protect the public seeking alcohol and drug related services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will hold the new credentials established through the legislation enacted during the 2015 legislative session and the suicide continuing education requirement enacted in 2013.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a continuing education requirement for a credential holder with a registration or license issued by the board.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute giving the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only new cost associated to the amendment relates to the new created continuing education requirements for the new registrants and licensees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the continuing education requirements expected of them by the board.
(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.083(1) and (2).

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

STATEMENT OF EMERGENCY
201 KAR 35:050E

This emergency regulation establishes the curriculum of study requirements for individuals who are seeking a registration, certification, and licensure from the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:050E. Curriculum of study.

RELATES TO: KRS 309.083(4), (8)
STATUTORY AUTHORITY: KRS 309.083(1), (5), (6), 309.083, 309.0831, 309.0832, 309.0833(4)
EFFECTIVE: August 25, 2015
NESSCesity, FUNCTION, AND CONFORMITY: KRS 309.083, 309.0831, 309.0832, and 309.0833(4) requires that applicants for a credential[certification] shall complete a specific number of[have completed 270] classroom hours of board-approved curriculum. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1.(1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall complete sixty (60) classroom hours which shall include:
   (a) Sixteen (16) hours of interactive, face-to-face training in ethics;
   (b) Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
   (c) Ten (10) hours of training in recovery support;
   (d) Ten (10) hours of training in mentoring and education; and
   (e) Ten (10) hours of training in recovery support.
   (2) Certification. (a) An applicant seeking certification as an alcohol and drug counselor shall complete the 270 classroom hours which are of curriculum required by KRS 309.083(4) to receive certification as an alcohol and drug counselor. The 270 classroom hours shall be specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:
      1. Understanding addiction;
      2. Treatment knowledge;
      3. Application to practice;
      4. Professional readiness;
      5. Clinical evaluation;
      6. Treatment planning;
      7. Referral;
      8. Service coordination;
      9. Counseling;
      10. Client, family, and community education;
      11. Documentation; and
      12. Professional and ethical responsibilities.

function, which shall be:
   (a) Screening;
   (b) Intake;
   (c) Client orientation;
   (d) Assessment;
   (e) Treatment planning;
   (f) Counseling;
   (g) Case management;
   (h) Crisis intervention;
   (i) Client education;
   (j) Referral;
   (k) Reports and recordkeeping; and
   (l) Consultation.
   (b) A minimum of 135 hours of the total 270 hours shall be specific to alcohol or drug treatment.
   (c) A minimum of six (6) hours of the total 270 hours shall be interactive, face-to-face[specific to professional] ethics training related to counseling.
   (d) Three (3) hours of the total 270 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.
   (e) An applicant seeking certification as an alcohol and drug counselor shall complete 180 classroom hours of
curriculum which are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:

1. Understanding addiction;
2. Treatment knowledge;
3. Application to practice;
4. Professional readiness;
5. Clinical evaluation;
6. Treatment planning;
7. Referral;
8. Service coordination;
9. Counseling;
10. Client, family, and community education;
11. Documentation; and
12. Professional and ethical responsibilities.

(b) A minimum of six (6) hours of the total 180 hours shall be interactive, face-to-face ethics training relating to counseling.

c) Two (2) hours of the total 180 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

d) Three (3) hours of the total 180 hours shall be specific to domestic violence.

(5) Subsections (2) through (4) shall go into effect January 1, 2009.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:

(a) Is an organized program of learning;
(b) Covers an area listed in Section 1 of this administrative regulation; and
(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as follows:

(a) A chapter in a book shall be equivalent to ten (10) classroom hours.
(b) One authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit the following:

(a) A copy of the title page, table of contents, and bibliography.

1. Publication in a professional refereed journal is equivalent to fifteen (15) classroom hours.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by core area as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

(2) Appropriate documentation of the course shall include:

(a) Date;
(b) Title;
(c) Description;
(d) Sponsoring organization;
(e) Presenter and presenter's credentials;
(f) Number of contact hours attended; and
(g) Certificates of attendance or transcript.

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

(a) *KBADC Form 5, Peer Support Specialist Verification of Alcohol/Drug Training*, June 2015;
(b) *KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training*, June 2015; and
(c) *KBADC Form 11, Verification of Classroom Training*, June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m. (Certification as an alcohol and drug counselor in the International Certification and Reciprocity Consortium shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification established in KRS 309.082.)

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a required education requirement for a credential holder to maintain competency in the practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the educational requirements of a credential holder and protect the public seeking alcohol and drug related services.

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

(a) How the amendment will change this existing administrative regulation: The amendments will hold the new credentials established through the legislation enacted during the 2015 legislative session.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a required education for a credential holder with a registration or license issued by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing an education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the education requirement or be subject to possible disciplinary action.

(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 new cost associated to the amendment related to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the education requirements expected of them by the board.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, and 309.0833.

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:

STATEMENT OF EMERGENCY
201 KAR 35:055E

This emergency regulation establishes the requirements for temporary credentials for a person to become registered as an alcohol and drug peer support specialist or a certified alcohol and drug counselor. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

GEORGE WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Emergency Administrative Regulation)

201 KAR 35:055E. Temporary Registration or Certification.

RELATES TO: KRS 309.083, 309.0831
STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

EFFECTIVE: August 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for an applicant for temporary credentials. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An application for a credential to perform functions as a drug and alcohol peer support specialist may be submitted after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed application for temporary registration. The application shall:

(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);
2. Proof of a high school diploma or equivalent;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;
4. An attestation to being in recovery for a minimum of two (2) years from a substance-related disorder; and
5. A supervision agreement signed by the applicant and the applicant’s supervisor.

Section 2. Application for Temporary Certification. (1) An application for a credential to perform functions as a certified drug and alcohol counselor may be submitted after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed application for temporary registration. The application shall:

(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
3. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);
2. Proof of a high school diploma or equivalent;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;
4. An attestation to being in recovery for a minimum of two (2) years from a substance-related disorder; and
5. A supervision agreement signed by the applicant and the applicant’s supervisor.
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
   (b) Be accompanied by:
   1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35.020, Section 1(1);
   2. An official transcript for all levels of education required for certification;
   3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and
   4. A supervision agreement signed by the applicant and the applicant’s supervisor.

Section 3. Period of Temporary Credential. (1) The period of a temporary credential shall be terminated upon the passage of two (2) years from issuance.

(2) Under exceptional circumstances and upon written request consigned by the board approved supervisor, the board may approve an extension of the period of a temporary credential for no more than two (2) years.

(3) The board shall grant no more than two (2) extensions of the period of a temporary credential.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
Filed WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator,
Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the application process for an individual to obtain a temporary registration or certification.
(b) The necessity of this administrative regulation: The necessity of this regulation is provide the board with regulatory control of those individuals who are engaged in peer support services for alcohol and drug counseling prior to full credentialing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for obtaining a temporary registration or certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification and provide the board with the discipline option when necessary.

(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(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: An individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to pay a fee for the temporary credential.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(f) 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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The only new fee is the application fee for a temporary registration in the amount of fifty (50) dollars.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. State the name of the state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (5), 309.083, 309.0831.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.

(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 board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.

(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 board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how
many peer support specialists will submit an application.
(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 (+/-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

STATEMENT OF EMERGENCY
201 KAR 35:060E

This emergency regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. The emergency regulation will provide the board will allow the board to regulate and discipline all credential holders created by HB 92. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVIE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:060E. Complaint procedure.

RELATES TO: KRS 309.0805(1), 309.0813(6), (7), (11), (13), 309.086

STATUTORY AUTHORITY: KRS 309.0813(6), (7), (11)

EFFECTIVE: August 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086 authorizes the board to fine, reprimand, admonish, revoke, suspend, place on probation, or restrict a credential holder and delineates the causes for which disciplinary action may be taken against a credential holder. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309. The administrative regulations promulgated thereunder, or another state or federal statute or regulation.

(3) "Complaint" means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:
(a) KRS Chapter 309.
(b) Administrative regulations promulgated in accordance with KRS Chapter 309.
(c) Another state or federal statute or regulation; or
(d) A combination of paragraphs (a), (b), or (c).

(4) "Complaint screening committee" means a committee consisting of up to two members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board, which establishes charges against a credential holder or another and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. (1) Receipt of Complaints. (a) A complaint:
1. Individual; 2. Organization; or 3. Entity;
(b) Shall be:
1. In writing; and
2. Signed by the person offering the complaint; and
(c) May be filed by the board based upon information in its possession.

(2) (a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual’s response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of the board’s notice to submit a written response.

(3) (a) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from receipt to submit a written reply to the response.

Section 2. (2) Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual’s response, the complaint screening committee shall consider the individual’s response, complainant’s reply to the response, and any relevant material available and make a recommendation to the board.

(a) The names of the individuals and other identifying information shall be redacted to provide anonymity.

(b) The complaint screening committee shall recommend to the board whether there is sufficient evidence to warrant a formal investigation of the complaint.

(2) If the complaint screening committee determines there is insufficient evidence to warrant an investigation, it shall recommend that the board determine before formal investigation that a complaint is without merit, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board’s determination.

(3) If the board accepts the recommendation of the complaint screening committee that a complaint warrants a formal investigation, it shall:
(a) Authorize an investigation into the matter; and
(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

(4) If the board accepts the recommendation of the complaint screening committee that there is a prima facie violation of KRS Chapter 309 or 201 KAR Chapter 35, the board shall issue a formal complaint against the credential holder.

Section 3. (1) The board may investigate complaints related to violations of this administrative regulation and may impose the following penalties on a credential holder:
(a) Restrict;
(b) Probate;
Section 4. [Results of Formal Investigation; Board Decision on Hearing.] (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.

(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.

(b) If the board accepts the recommendation of the complaint screening committee that [shall determine whether] there has been a prima facie violation of KRS Chapter 309 or the administrative regulations promulgated thereunder [and] a complaint shall be filed.

(2) If the board accepts the recommendation of the complaint screening committee [determines] that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board accepts the recommendation of the complaint screening committee [determines] that a violation has occurred but is not serious, the board shall issue a written admonishment to the credential holder.

(a) A copy of the written admonishment shall be placed in the permanent file of the credential holder.

(b) Private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(ii) and shall not constitute disciplinary action, but may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

(4) If the board accepts the recommendation of the complaint screening committee [determines] that a complaint warrants a disciplinary action, the board shall issue a notice of disciplinary action and inform the credential holder:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

(b) Of the penalty to be imposed; and

(c) That the credential holder may appeal the decision to the board within twenty (20) calendar days of the date of the board's notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the board's notice.

(3) If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time for the credential holder to request an appeal.

Section 5. [The issuance of a formal complaint against the respondent counsel for the board, in conjunction with the complaint screening committee, shall require a formal complaint that states clearly the charge or charges to be considered at the hearing.]

(a) The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

(b) The formal complaint shall be processed in accordance with KRS Chapter 13B.

(c) If the board determines that a person is in violation of KRS 309.0805(1), it shall:

1. Order the individual to cease and desist from further violations of KRS 309.0805(1); or

2. [Initiate action in Franklin Circuit Court pursuant to KRS 309.0813(13) for injunctive relief to stop the violation of KRS 309.0805(1).]

Section 6. [Settlement by Informal Proceedings.] (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 7. Revocation of Probation. (1) If the board moves to revoke the probation of a credential holder, the board shall issue a notice of revocation and inform the credential holder:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated;

(c) That the credential holder may appeal the revocation to the board within fifteen (15) days of the date of notification of revocation; and

(d) The notification shall be sent to the last known address on file with the board for the credential holder.

(2) A written request for an administrative hearing shall be filed with the board within fifteen (15) calendar days of the date of the board's notice.

(3) If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time for the credential holder to request an appeal.

Section 8. Any request for an administrative hearing shall be served on the Board of Alcohol and Drug Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601 [6. Notice of Service of Process. A notice required by KRS Chapter 309 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.]

Section 9. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 10. [Z] Incorporation by Reference. (1) "Complaint Form", 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, ext. 222, Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will place the onerous on the credential holder to request an administrative hearing following discipline being brought by the board.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a complaint and administrative hearing process to address alleged violations brought before the board.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will have to request a hearing before the board.
(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 new cost associated to the amendment related to the amendment of this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will who do desire to challenge a disciplinary action brought by the board will not bear the expense of an unwanted administrative hearing process.
(d) 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.
(c) 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 and applicants.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding is required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(6), (7), (11), 309.086.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be saved through the amendment of this regulation but there will be a saving involved:
(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 (+/-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

STATEMENT OF EMERGENCY

201 KAR 35:070E

This emergency regulation establishes the supervision requirements and procedures for individuals obtaining supervision experience for a credential by the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:070E. Supervision[and work] experience.

RELATES TO: KRS 309.083(4), 309.0831, 309.0832, 309.0833
STATUTORY AUTHORITY: KRS 309.0813(1),(3),(5), 309.083, 309.0831, 309.0832, 309.0833
EFFECTIVE: August 25, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed/certified. KRS 309.085, 309.0831, 309.0832, and 309.0833 require(4) all applicants for registration as an alcohol and drug peer support specialist, certification as an alcohol and drug counselor, licensure as a clinical alcohol and drug counselor associate, or licensure as a clinical alcohol and drug counselor to have completed under [300 hours of board-approved experience working with alcohol or drug dependent persons under the] direct supervision from(4a) a certified alcohol and drug counselor who has at least two (2) years of postcertification experience or licensure as a clinical alcohol and drug counselor. [This administrative regulation establishes the standards for the accuracy of the required supervised work experience.]

Section 1. (1) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration.

(2) Definitions. (1) “Clinical supervision” means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing services related to the twelve (12) core functions of the alcohol and drug counselor.

(2) “Clinical supervisor” means a certified alcohol and drug counselor who has at least two (2) years of postcertification experience and who provides supervision to not more than twelve (12) applicants in an individual or group setting at any one (1) time, and whose certificate is currently in good standing with the board.

(3) “Work experience” is defined as the hours spent performing the services, tasks, and reports necessary for providing counseling or intervention to a chemically dependent person or person’s significant others.

Section 2. Clinical Supervision. (1) Clinical supervision shall consist of at least 300 hours and shall include a minimum of ten (10) hours in each of the following twelve (12) core functions:

(a) Screening;
(b) Intake;
(c) Client orientation;
(d) Assessment;
(e) Treatment planning;
(f) Counseling;
(g) Case management;
(h) Crisis intervention;
(i) Client education;
(j) Referral;
(k) Reports and recordkeeping; and
(l) Consultation.

(2) Clinical supervision may occur in individual or group settings.

(b) The methods of clinical supervision include:
1. Face-to-face;
2. Video conferencing; or
3. Teleconferencing.

(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(5) Clinical supervisors shall complete and submit the Supervisor’s form in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor(incorporated by reference in 201 KAR 35:020, Section 10) that documents the 300 hours of supervision that has occurred during the work experience.

Section 2. Except as provided, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement.

Section 3. (1) All supervision requirements shall:
(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation;
(b) Consist of not less than two (2) hours two (2) times a month of the practice of alcohol and drug counseling; and
(c) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact required by subsection (1) of this section, upon specific approval by the board.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision that was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination(Substitution of Work Experience).

(1) An applicant may substitute, for part of the work experience, a degree in a related field such as:
(a) Addictions;
(b) Counseling;
(c) Psychology;
(d) Psychiatric nursing; or
(e) Social work.

(2) Requests for substitution shall be submitted to the board along with transcripts from an accredited College or University.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(4) A master’s degree or higher in a related field, with a specialization in additions or drug and alcohol counseling may be substituted for 4,000 hours of work experience.

(a) Upon specific approval by the board.

(2) A master’s degree or higher in a related field may be substituted for 3,000 hours of work experience.

(4) A bachelor’s degree in a related field, may be substituted for 2,000 hours of work experience.

(4) A bachelor’s degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in Section 3 of this administrative regulation.

(4) The hours of work experience shall be documented on the candidate’s application for certification and shall contain verification by the supervisor.

Section 4. (1) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twelve (12) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.
Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee’s practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee’s practice as appropriate to insure that the supervisee’s practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a Supervisor Log of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, or an applicant for a certificate as a certified alcohol and drug counselor, the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(d) Have direct observation of the supervisee’s work at least semi-annually. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(e) Have direct knowledge of the size and complexity of the supervisee’s caseload;

(f) Limit and control the caseload as appropriate to the supervisee’s level of competence;

(g) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(h) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(d) Review and countersign all peer recovery service plans;

(e) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(f) Have direct observation of the supervisee’s work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(g) Have direct knowledge of the size and complexity of the supervisee’s caseload;

(h) Limit and control the caseload as appropriate to the supervisee’s level of competence;

(i) Have knowledge of the methods and techniques being used by the supervisee; and

(j) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor as needed in addition to a regularly-scheduled supervisory session.

(c) Other information which may be relevant to an adequate assessment of the supervisee’s level of competence;

(d) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(e) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 11. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer’s credential and name of supervisor of record. A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.

Section 12. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision approved by the board; and
4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder’s practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or substance use disorders counseling in a competent manner;

(h) Review and countersign assessments as needed or appropriate;

(i) Review and countersign service or treatment plans as needed or appropriate;

(j) Have direct observation of the disciplined credential holder’s work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder’s caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder’s physical and emotional well-being when it has a direct bearing on the disciplined credential holder’s competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder’s practice as appropriate to ensure that the disciplined credential holder’s practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two weeks following this meeting with a copy to the board liaison.

Section 13. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:

1. Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;

2. Be registered for practicum credit on the transcript in his or her course of study;

3. Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;

4. Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student’s work; and

5. Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.

Section 14. Incorporation by Reference. The following material is incorporated by reference:

(a) “KBADC Form 3, Supervisory Agreement”, June 2015;
(b) “KBADC Form 4, Request to Provide Supervision”, June 2015;
(c) “KBADC Form 6, Peer Support Specialist Supervisory Agreement”, June 2015;
(d) “KBADC Form 7, Supervision Evaluation”, June 2015;
(e) “KBADC Form 8, Peer Support Specialist Verification of Supervision”, June 2015;
(f) “KBADC Form 9, Supervision Evaluation for Peer Support Specialist”, June 2015;
(g) “KBADC Form 13, Verification of Clinical Supervision”, June 2015; and
(h) “KBADC Form 14, Supervision Annual Report”, June 2015.

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.

(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 authority to promulgate regulations regarding the requirements for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

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

(a) How the amendment will change this existing administrative regulation: The amendments expand the credential holders who are to be supervised; cap the number of supervisees that a supervisor may supervise; establish reporting requirements; and provides for the supervision of disciplined credential holders and graduate students.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the authority to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(4) Provide an analysis of how the entities identified in question
STATEMENT OF EMERGENCY
201 KAR 35:075E

This emergency regulation establishes the standards for the accumulation of the required supervised work experience. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialled individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Emergency Administrative Regulation)

201 KAR 35:075E. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833
STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833
EFFECTIVE: August 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) authorizes the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.083, 309.0831, 309.0832, and 309.0833 establish the standards for the accumulation of the required supervised work experience.

Section 1. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor. (1) An applicant may substitute, for part of the work experience, a degree in a related field such as:
   (a) Addiction;
   (b) Counseling;
   (c) Psychology;
   (d) Psychiatric nursing; or
   (e) Social work.

   (2) Requests for substitution shall be submitted to the board along with transcripts from an accredited college or university.

   (3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

   (a) A master’s degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling, may be substituted for 4,000 hours of work experience.
   (b) A master’s degree or higher in a related field may be substituted for 3,000 hours of work experience.
   (c) A bachelor’s degree in a related field may be substituted for 2,000 hours of work experience.
   (d) A bachelor’s degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in Section 3 of this administrative regulation.

(4) The hours of work experience shall be documented on the candidate’s application for certification and shall contain verification by the supervisor.

Section 2. Incorporation by Reference. (1) "KBADC Form 12, Workplace Experience Substitution Request", June 2015, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes what is considered qualified work experience for each credential.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the work experience required to be credentialed by the board.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist an applicant and board to understand the work experience required to be credentialed by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: 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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by credential holders and applicants.

(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.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder has knowledge of the required work experience as set out in the statute for each credential.

(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 and applicants.

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

(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 applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0831, 309.0832, and 309.0833.

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.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either
(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:
STATEMENT OF EMERGENCY
201 KAR 35:090E

This emergency regulation establishes the procedures for the appealing from the board refusing to issue, renew, or reinstate a registration, certificate, or license or deny continuing education hours by the board. This emergency regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. During the 2015 legislative session, HB 92 was signed into the law, which took effect on June 24, 2015, that expanded the credentials regulated by the Kentucky Board of Alcohol and Drug Counselors and services that may be offered by qualified, credentialed individuals. No administrative hearing can be held until the regulation is promulgated. This emergency regulation shall be conducted in accordance with KRS Chapter 13B. The ordinary administrative regulation is necessary because Kentucky is facing an epidemic of alcohol and drug abuse, especially heroin. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
GEOFFREY WILSON, Chairperson

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Emergency Administrative Regulation)

201 KAR 35:090E. Appeal from a denial of or refusal to renew or reinstate a registration, certificate, or license, or denial of continuing education hours by the board.

RELATES TO: KRS 309.085, 309.086, 309.087
STATUTORY AUTHORITY: KRS 309.0813(6)
EFFECTIVE: August 25, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086 authorizes the board to refuse to issue or renew a registration, certificate, or license. KRS 309.085 authorizes the board to reinstate a registration, certificate, or license not renewed within ninety (90) days of the renewal date and requested within one (1) year of the anniversary date of issuance of renewal. This administrative regulation establishes procedures for appeals from the board refusing to issue, renew, or reinstate a registration, certificate, or license or deny continuing education hours.

Section 1. The board may:
(1) Deny issuance of a registration, certificate, or license;
(2) Refuse to renew a registration, certificate, or license; or
(3) Refuse to reinstate a registration, certificate, or license.

Section 2. (1) The board may deny, refuse to renew, or refuse to reinstate a registration, certificate, or license to an applicant or credential holder who:
(a) Has entered an Alford plea guilty, pleaded guilty, or has been convicted of a:
1. Felony; or
2. Misdemeanor;
(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or license in any jurisdiction or state, including Kentucky; or
(c) Has violated a provision of KRS 309.080 to 309.089 or 201 KAR Chapter 35.
(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant’s or credential holder’s showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 3. (1)(a) The board shall issue written notice of the denial or refusal and inform the applicant or credential holder of the specific reason for the board’s action, including:
1. The statutory or regulatory violation; and
2. The factual basis on which the denial or refusal is based; and
(b) The notice of denial or refusal shall be sent to the last address provided to the board by the applicant or credential holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board’s notice.
(3) If the request for an administrative hearing is not timely filed, the denial or refusal shall be effective upon the expiration of the time for the credential holder to request an appeal.
(4) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.
(5) A credential holder may petition the board to stay the effectiveness of a refusal to renew.

Section 4. Appeal of Denial of Continuing Education Hours by the board. (1) If an application for approval of continuing education hours is denied, the credential holder or provider shall have the right to appeal the board's decision.
(2) An appeal shall be:
(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 5. Any request for an administrative hearing shall be sent to the Board of Alcohol and Drug Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the appeals process from the denial of an application, refusal to renew or reinstate a registration, certificate, or license, or denial of continuing education hours by the board.
(b) The necessity of this administrative regulation: This regulation is necessary to provide a party adversely affected by a board’s decision to have a due process hearing.
(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 authority to promulgate regulations regarding the administrative hearing process to appeal a denial of or refusal to renew or reinstate a registration, certificate, or license.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a party adversely affected by a board’s decision to have a due process hearing.
(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
STATEMENT OF EMERGENCY
301 KAR 2:225E

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

STEVEN L. BESHEAR, Governor
GREGORY K. JOHNSON, Commissioner

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

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603
EFFECTIVE: August 21, 2015
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to promulgate methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits[based upon an adequate supply] and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) “Dove” means mourning dove or white-winged dove.
(2) “Migratory game bird” means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule[moorhen], woodcock,[common] snipe, purple gallinule, Virginia rail, or sora rail.
(3) “Teal” means green-winged teal, blue-winged teal, or cinnamon teal.
(4) “Wildlife Management Area” or “WMA” means a tract of land:
(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
(b) That has “Wildlife Management Area” or “WMA” as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.
(2) The following seasons shall apply to migratory bird hunting:
(a) Dove, beginning on:
1. September 1 for fifty-six (56) consecutive days;
2. Thanksgiving Day for eleven (11) consecutive days; and
3. The Saturday before Christmas or twenty-three (23) consecutive days;
4. Provide an analysis 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.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (d) How much will it cost to administer this program for the first year? None
   (e) How much will it cost to administer this program for the subsequent years? None
   (f) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (g) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (h) How much will it cost to administer this program for the first year? None
   (i) How much will it cost to administer this program for the subsequent years? None
   (j) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (k) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (l) How much will it cost to administer this program for the first year? None
   (m) How much will it cost to administer this program for the subsequent years? None
   (n) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (o) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (p) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (q) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (r) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (s) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (t) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (u) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (v) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (w) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (x) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (y) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
   (z) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who are denied, refused renewal or reinstatement, or continuing education will have a means to challenge the board’s decision and have the decision possibly reversed.
Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:
   1. Daily limit of fifteen (15); and
   2. Possession limit of forty-five (45).

(b) Woodcock:
   1. Daily limit of three (3); and
   2. Possession limit of nine (9).

(c) Snipe:
   1. Daily limit of eight (8); and
   2. Possession limit of twenty-four (24).

(d) Wood duck and teal:
   1. Daily limit of twenty-five (25); and
   2. Possession limit of seventy-five (75).

(e) Common moorhen and purple gallinule, singly or in aggregate:
   1. Daily limit of three (3); and
   2. Possession limit of fifteen (15).

(f) Canada goose:
   1. Daily limit of five (5); and
   2. Possession limit of fifteen (15).

   (2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:
      (a) The head; or
      (b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Wood duck, beginning on the third Saturday in September for thirty (30) consecutive days; and

(c) Woodcock, beginning on November 1 for forty-five (45) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for thirty (30) consecutive days; and

(e) Teal, beginning on the third Saturday in September for fifteen (15) consecutive days.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:
   (a) Lead shot;
   (b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21; or
   (c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Eakler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt Canada goose during the September season.

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

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

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.
Contact Person: Rose Mack  
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.  
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2015–2016 migratory bird seasons in accordance with the USFWS.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.  
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the start of wood duck and teal seasons from the third Wednesday in September to the third Saturday in September. It will decrease the daily bag limit of common and purple gallinules from fifteen (15) to three (3) and the possession limit from forty-five (45) to nine (9). All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks.  
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting seasons, as defined by the dates in which the hunting season may open as early as September 1.  
(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.  
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.  
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.  
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Duck hunters will have the start of the season shift from the third Wednesday to the third Saturday in September. This will allow an additional weekend of hunting opportunity for teal. Gallinule hunters will have a reduced bag limit from fifteen (15) to three (3) and reduced possession limit from forty-five (45) to nine (9).  
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).  
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.  
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.  
(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 implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.  
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.  
(9) TIERING: Is tiering applied Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife 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 open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.  
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.  
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.  
(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.  
(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program 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


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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Justification for the imposition of additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. The amended regulation is more restrictive than the federal frameworks for gallinule bag limits and possession limits. The limits are being reduced because of declines in the mid-continental population, including Kentucky populations. By reducing bag limits, we are hoping to avoid a complete season closure by the U.S. Fish and Wildlife Service.

Statement of Emergency

601 KAR 2:030E

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. KRS 189A.500 was effective June 24, 2015, and this emergency administrative regulation is filed to meet the deadline for an administrative regulation required by statute. This emergency administrative regulation is also filed to address a risk to public safety associated with driving under the influence. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
MICHAEL W. HANCOCK, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Emergency Amendment)

601 KAR 2:030E. Ignition interlock[devices; the surrendering of license plates].


STATUTORY AUTHORITY: KRS 189A.500(189A.085(4)(b), 189A.340(4)(d))

EFFECTIVE: September 1, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth’s ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189.010 to obtain an ignition interlock device and license. KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(d) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public.

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above .02%.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(4).

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, and service provider of the certified ignition interlock devices. The service provider may also be a manufacturer of an ignition interlock device.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Permanent lockout" means a feature of the ignition interlock device that prevents a motor vehicle from starting until the ignition interlock device is reset by a service provider or technician.

(18) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(19) "Retest" means an additional opportunity to provide a breath sample.

(20) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(21) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(22) "Service facility" means the physical location where the
service provider's technicians install, calibrate, or remove ignition interlock devices.

(23) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(24) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(26) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device;

(e) Delinquent payment of provider fees.

Section 2. Ignition Interlock Device Applications. (1) The requirements contained in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 186.523.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court for Conviction Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorization for Ignition Interlock License and Device, AOC-495.11, pursuant to KRS 186.523.

(e) The cabinet shall issue an ignition interlock license for the period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet’s web site at http://drive.ky.gov and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at http://drive.ky.gov.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of $105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional offices or regional regulation office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, and 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at http://drive.ky.gov.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-176, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's web site at http://drive.ky.gov.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation to the circuit clerk in the defendant's county of residence.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence;

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) day's written notice to the defendant, the provider may remove an ignition interlock device for nonpayment of fees on an account that is in arrears for thirty (30) days or more. Notice of removal of the device for nonpayment shall be communicated to the appropriate county attorney within five (5) days of the device removal. The defendant's failure to satisfy the attorney may result in a per diem penalty.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.
Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.
(2) Ignition interlock device providers certified under this administrative regulation prior to the effective date of the amended administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.
(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.
(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.
(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.
(6) (a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in effect or the purpose of replacing a defendant’s provider due to that provider’s insolvency or business interruption.
(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.
(7) A device provider shall notify the cabinet within fifteen (15) days of an investigation, pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.
(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for a period commensurate with the driver’s history record, pursuant to KRS 186.018, after which time the records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of a new ignition interlock device shall:
(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and
(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/STATISTICS/NHTSA/811589.pdf.
(2) An ignition interlock device provider requesting certification shall:
(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;
(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;
(c) Provide a plan that includes a location map describing the areas and locations of the provider’s proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility for each of the twelve (12) highway districts; and
(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;
(e) Provide a plan for the receipt, maintenance, and destruction of or appropriate return of pendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver’s Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;
(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider’s liability insurance shall be expressly considered primary in the policy;
(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;
(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining roadside service if needed; and
(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.
(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:
(a) Device tampering or circumvention violations;
(b) Device lockout due to arrearages; or
(c) A defendant’s failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.
(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. Indemnification shall extend to acts or omissions by the cabinet, department, or its employees or agents due to verified errors in reporting ignition interlock activities by the provider.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:
(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;
(b) Device rental on a monthly basis;
(c) Scheduled device calibrations and monitoring as specified in the RFQ;
(d) Required insurance in case of theft, loss, or damage to the device and its components;
(e) Resets necessary as a result of tampering by the defendant;
(f) Missed appointments without notice;
(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and
(h) Device removal.
(2) (a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition Interlock, Amended Order 2015-13.
(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.
(3) The defendant shall remit the fees directly to the device or
service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) If a device is removed or placed in lockout for arrearages, the device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at http://drive.ky.gov;

(b) Make available an Ignition Interlock Application, TC 94-175, available at http://drive.ky.gov and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177, available at http://drive.ky.gov to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

(b) Name, policy number, and expiration date of defendant’s automobile insurance policy;

(c) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicles; and

(d) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be provided to enter into a lockout condition, at which time the vehicle shall be required to be returned to the site of installation.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant’s ignition interlock license.

(6) A provider shall, within forty-eight (48) hours of receipt of the court’s order directing removal of the device, initiate a permanent lockout if the vehicle has not been returned to the facility. If a permanent lockout occurs, the defendant shall notify the device provider immediately to arrange for the return of the vehicle.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider’s liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device’s performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of the device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy; or

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider’s response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner’s decisions pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider’s notification to the cabinet that they will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.
Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received; if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

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

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August 2015; and

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's web site at http://drive.ky.gov/Surrender of Motor Vehicle Registration Plates.

(1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify all motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received; if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(2) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(3) The court shall return all confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of all confiscated license plates.

(4) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order, shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;

2. Record results of the breath alcohol concentration test;

3. Record how long the vehicle is operated; and

4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;

2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;

3. That retests occur during operation of the vehicle; and

4. That the device enter a lockout condition in five (5) days if a retest is not performed or the result of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

1. If the retest is not performed; or

2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall:

(a) Be installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and

(b) Be used in accordance with the manufacturer's instructions.

(3) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(4) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(5) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and...
Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using an ignition interlock device;

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.500; or

(c) The licensee is required by order of the court to be using an ignition interlock device.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MICHAEL W. HANCOCK, P. E., Secretary
RODNEY KUHL, Commissioner
REBECCA GOODMAN, Executive Director
APPROVED BY AGENCY: August 27, 2015
FILED WITH LRC: September 1, 2015 at 2 p.m.
CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7690, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary: This regulation will amend and replace 601 KAR 2:030, the current ignition interlock 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: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 per defendant, pursuant to KRS 189A.420(1)(b).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at $525,000.

(b) On a continuing basis: $105 per defendant and up to approximately $525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.

(9) TIERING: Is tiering applied? No tiering for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(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. For local government, costs should be minimal as the
process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(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 is not expected to generate revenue.

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

(c) How much will it cost to administer this program for the first year? Up to approximately $525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(As Amended at ARRS, September 8, 2015)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 156.010, 158.007(8), 164.002(1), (2), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to determine the KEES curriculum's courses of study. KRS 164.7879(5)(d) requires the authority to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish a table to convert an SAT score to an ACT score. KRS 164.7881(6) requires the authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalent under a trimester or quarter system at a postsecondary education institution and does not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:
   (a) Located in a state other than Kentucky or in another country; and
   (b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:
   (a) Administered to a student for entrance to a Kentucky postsecondary education institution; and
   (b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" or "AP" is defined by KRS 164.002(1)(158.007(14).

(5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).

(6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3.305.

(7) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Dual credit" is defined by KRS 158.007(8).

(9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10) "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(11) "GED" means a general educational development diploma awarded to a student.

(12) "IB" or "International Baccalaureate" is defined by KRS 164.002(7)(158.007(16).

(13) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(14) "SAT" means the test:
   (a) Administered to a student for entrance to a Kentucky postsecondary education institution; and
   (b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:
   1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";
   2. Adding the total number of points accumulated for an academic year; and
   3. Dividing the total number of points accumulated in paragraph (2) of this subsection by the total number of units for the academic year.

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(a) A high school student who participated in an educational school program standard. KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)(a) and b and shall submit the Home of Record Certification form to the authority.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. [Requesting] Grade and curriculum information from the
local school; and
2. [Requesting] that the local school submit the information to
the authority using the Curriculum Certification form and the Data
Submission form.
(b) Upon receipt of curriculum and grade information from an
accredited out-of-state high school or Department of Defense
school for a student determined to be eligible for the KEES
Program under this section, the authority shall:
1. Verify that the submitted curriculum meets the requirements
of Section 4 of this administrative regulation;
2. Verify that the out-of-state high school or Department of
Defense school is an accredited high school; and
3. Retain the Curriculum Certification form on file until the
student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES
Curriculum. (1) A Kentucky postsecondary student shall be eligible
to receive a base scholarship award if the student:
(a) Has earned a base scholarship award in high school;
(b) Has completed the KEES curriculum as set forth in
subsection (2) of this section;
(c) Has graduated from a Kentucky high school except as
provided in Section 2(4) or 3 of this administrative regulation; and
(d) Is enrolled in a participating institution in an eligible
program.
(2) Except as provided in subsection (4) of this section, the
KEES curriculum shall consist of the curriculum standards
established in 703 KAR 4:060; or
(3) A student who graduates from high school at the end of the
fall semester of his or her senior year and who meets the
requirements of KRS 164.7874(7) shall be eligible to earn a KEES
award for that year upon:
(a) Completion of no fewer than three (3) courses of study; and
(b) Satisfying the provisions of KRS 164.7879.
(4) Except as provided in subsection (5) of this section, a high
school may substitute an integrated, applied, interdisciplinary, or
higher level course for a required course or required academic and
career interest standards-based learning experience if the course:
(a) Provides the same or greater academic rigor and the course
covers or exceeds the minimum required content areas established
in 703 KAR 3:305.
(b) [Advanced placement] course, [International baccalaureate] course, CAI course, dual credit course, or a course
taken at a postsecondary education institution.
(5) Beginning with the 2012-2013 academic year, only one (1)
cooperative education course per academic year shall count for
purposes of satisfying KEES curriculum requirements.
(6) A high school annually shall provide written documentation
to a student advising on whether the student's schedule of
coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An
eligible program shall be a certificate or degree program offered by
a participating institution and recognized by the authority pursuant
to 11 KAR 15:010, Section 1(10).
(2) Except as established in subsection (4) of this section,
an eligible program at an out-of-state participating institution shall
be limited to those programs that qualify through the Academic
Common Market administered by the Southern Regional Education
Board except as provided in subsection (4) of this section.
(3) Pursuant to KRS 164.7881(6), the following academic
programs at Kentucky postsecondary education institutions shall
be approved as five (5) year baccalaureate degree programs:
(a) Landscape architecture (04.0601); and
(b) For students that graduated from high school not later than
the 2004-2005 academic year, engineering if enrollment in the
engineering program has been continuous (14.0101, 14.201,
14.0301, 14401, 14501, 14.0701, 14.0801, 14.0901, 14.1001,
(4) Pursuant to KRS 164.78814(c)(c1), an academic program
shall be designated as an equivalent undergraduate program of
study if the student in the program of study:
(a) Has not received eight (8) academic terms of a KEES
award;
(b) Is classified by an institution as a graduate or professional
student and is enrolled in one (1) of the following academic
programs:
1. Pharm. D;
2. The optometry or veterinary medicine programs at an
institution, which is a part of the Kentucky Contract Spaces
Program; or
3. A program contained on the Equivalent Undergraduate
Programs List; and
(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS
164.7874(3), the following SAT to ACT Conversion Table shall be
used to convert scores for SAT exams taken prior to the 2011-
2012 academic year:

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<th>SAT I V+M</th>
<th>ACT Composite</th>
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### Table C-2
Concordance Between SAT I Recentered CR+M Score and ACT Composite Score

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<th>SAT I CR+M</th>
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This table may be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students’ actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT’s Research Division (319/337-1471).

June, 2008

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.
Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI [Advanced Placement (AP), International Baccalaureate (IB)] examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(b) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(c) In determining a high school student’s free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the “Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund” described in KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

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

(a) “Home of Record Certification”, June 2005;
(b) “Curriculum Certification”, June 2005;
(c) “Data Submission”, June 2005; and
(d) “Equivalent Undergraduate Programs List”, June 2005.

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

LISA PAYNE, Chair
APPROVED BY AGENCY: May 21, 2015
FILED WITH LRC: July 10, 2015 at 11 a.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798; phone (502) 696-7298, fax (502) 696-7293.
a renewal award.

(3) Failure to maintain eligibility for a base or supplemental KEEES award shall not impact the student's eligibility for a subsequent award pursuant to this program.

LISA PAYNE, Chair
APPROVED BY AGENCY: May 21, 2015
FILED WITH LRC: July 10, 2015 at 11 a.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, September 8, 2015)


RELATES to: KRS 164.518, 199.8941(4)
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

Section 1. Textbook Expense Incentive Reimbursement. A scholarship recipient shall be entitled to a monetary allowance from his employer for the purchase of textbooks in an amount equal to the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and $150 per academic year. This allowance or may be provided through reimbursement to the scholarship recipient by the employer, direct payment by the employer to the textbook vendor, or other means as agreed upon by the employer and scholarship recipient.

(1) Reimbursement. The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer no later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(b)(2) The participating early childhood facility shall, no later than fifteen (15) days following receipt of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks up to the maximum specified in this section not to exceed fifty (50) dollars per academic term and $150 per academic year.

(c)(3) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

(2) Direct payment.

(a) The participating early childhood facility shall enter into an arrangement with the textbook vendor whereby the employer authorizes the scholarship recipient to obtain the approved or necessary textbooks, and, upon receipt of a billing statement from the vendor, make a payment to the vendor for the actual cost of the textbooks up to the maximum specified in this section.

(b) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of direct payment of the textbook incentive to the vendor on behalf of a scholarship recipient.

(3) Other funding means. If the participating early childhood facility and the scholarship recipient mutually agree to another method for payment of the textbook expense incentive, the participating early childhood facility shall maintain documentation to evidence payment of the incentive and, upon request by the professional development counselor, provide proof to substantiate the payment.

Section 2. Related Educational Expense Reimbursement. (1) Subject to the availability of funds, a scholarship recipient who meets the requirements set forth in this section shall be eligible for reimbursement of related educational expenses as established in subsection (3) of this section.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least “C” or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term.

(3) The amount of the related educational expense reimbursement shall be:

(a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's degree; and
(b) $100 to a scholarship recipient pursuing an ECAC-approved early childhood development credential, pursuing other than a child development associate's, or an ECAC-approved associate or bachelor's degree.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the determination of eligibility for the reimbursement of related educational expenses and the amount of the award. Eligibility shall be determined based on the requirements of this administrative regulation.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services of the Cabinet for Health and Family Services a list of eligible recipients of reimbursement of related educational expenses. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and
2. The amount of the reimbursement of related educational expenses earned by the recipient.

(b) The Cabinet for Health and Family Service shall remit to the award recipient the earned reimbursement of related educational expenses established in subsection (3) of this section.

Section 3. Milestone Achievement Award. (1) The scholarship recipient shall present to the professional development counselor an official grade report from the participating early childhood facility no later than sixty (60) days following completion of the academic term evidence of earning the ECAC-approved early childhood development credential or degree to be eligible to receive a milestone achievement award. Milestone achievement award reimbursement shall be provided only to the extent funds are available.

(2) Evidence of earning the ECAC-approved early childhood development credential or associate or bachelor's degree shall be:

(a) The certificate for the Commonwealth Child Care Credential, the Child Development Associate Credential, or the Kentucky Early Childhood Development Director's Credential; or
(b) The diploma or official transcript from the participating educational institution for an ECAC-approved early childhood associate or bachelor's degree.

(3) The milestone achievement award amount shall be:

(a) $100 for earning the Commonwealth Child Care Credential in an early childhood development program approved by the ECAC;
(b) $250 for earning an initial child development associate's degree;
(c) $300 for earning an initial child development associate's degree in early childhood education or other program approved by the ECAC, or the Kentucky Early Childhood Development Director's Credential; or

1125
(d) $500 for earning an initial baccalaureate degree in interdisciplinary early childhood education or other program approved by the ECAC.

(4) The professional development counselor, no later than thirty (30) days after receiving the decision of the early childhood facility has paid the award, as well as instructions for completing the form OL-S, Single Tax District, Occupational License Fee Return and Instructions [Standard Occupational License Fee Return] to report business and occupational license taxes to the business entity’s local tax district, if so required.

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

(a) "Form OL-S, Single Tax District, Occupational License Fee Return", July 2015; and

(b) "General Instructions for Form OL-S for a Single Tax District", July 2015.

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

ALISON LUNDERGAN GRIMES, Secretary of State
APPROVED BY AGENCY: July 10, 2015
FILED WITH LRC: July 10, 2015 at 3 p.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

OFFICE OF KENTUCKY SECRETARY OF STATE
(As Amended at ARRS, September 8, 2015)

30 KAR 7:010. Standard form for occupational license fee return.

RELATES TO: KRS 67.750, 67.767
STATUTORY AUTHORITY: KRS 67.767(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 67.767(1)(a) requires the Secretary of the Service to promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities, as well as instructions for completing the form. This administrative regulation prescribes the standard form for occupational license tax returns and form instructions as mandated by KRS 67.767(1)(a).

Section 1. Definitions. (1) "Business entity" is defined by KRS 67.750(1).

Section 2. Business entity shall:

(1) Follow the filing requirements specified by the business entity’s local tax district; and

(2) Use the Form OL-S, Single Tax District, Occupational License Fee Return and Instructions [Standard Occupational License Tax Return] to report business and occupational license taxes to the business entity’s local tax district, if so required.

PERSONNEL CABINET
(As Amended at ARRS, September 8, 2015)

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;

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the relevant job classification.

Section 2. Reentry 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 in this administrative regulation.

(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 provisionally appointed in one of the following ways:

1. In accordance with the standards used for making new appointments in this administrative regulation; or
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

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;

(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 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;
3. 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. 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 file.

(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 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 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) Reinstatement.

(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 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, 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 with a higher pay grade.

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 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 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 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, 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) 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 if 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 relocation;
(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) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

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 under the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, for 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) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:

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.


(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 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 classification 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 shift 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 classification.

(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, or ERA, in the form of a lump sum payment of up to ten percent (10%) of midpoints 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;

(c) The appointing authority determines that the employee’s actions or ideas have resulted in significant financial savings or improvements in services for the Commonwealth and its citizens;

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 license, 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.

TIT LONGMEYER, Secretary
APPROVED BY AGENCY, June 11, 2015
FILED WITH LRC: June 11, 2015 at 2 p.m.
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.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, September 8, 2015)


RELATES TO: KRS 45A.030, 45A.085, 45A.180, 45A.183, 45A.690-45A.725
STATUTORY AUTHORITY: KRS 45A.180, 45A.183
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.180
requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as are determined to be feasible. This administrative regulation implements the provisions of KRS 45A.180 and 45A.183 relating to alternative construction delivery methods.

Section 1. Definitions. (1) “Alternative construction delivery method” means a delivery method other than design-build.
(2) “Chief purchasing officer” is defined by KRS 45A.030(3).
(3) “Construction management-at-risk” is defined by KRS 45A.030(6).
(4) “Construction manager-agency” is defined by KRS 45A.030(5).
(44) “Construction manager-agency” is defined by KRS 45A.030(6).
(5) “Construction manager-general contractor” is defined by KRS 45A.030(7).
(6) “Design-build” is defined by KRS 45A.030(12)[414].
(7) “Design-build” is defined by KRS 45A.030(13)[423].

Section 2. Use of Alternative Construction Delivery Methods. (1) An alternative construction delivery method may be appropriate for a competitive process, consistent with KRS Chapter 45A, if the chief purchasing officer issues a written determination by the chief purchasing officer that due to the nature, detail, or circumstances of a project:
   (a) It is not appropriate to solicit competitive bids using the conventional design-build delivery method; and
   (b) An alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of “construction management-at-risk,” “design-build,” “construction manager-general contractor,” or “construction manager-agency.”
   (2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include factors, such as the project’s:
      (a) Dollar scope;
      (b) Anticipated schedule;
      (c) Type; and
      (d) Overall complexity (such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project).

Section 3. (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals as provided in this section in accordance with KRS 45A.085(2) and 200 KAR 6:307.
A copy of the request for proposals shall be transmitted to the Capital Projects and Bond Oversight Committee staff.
(2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include factors such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project. The Finance and Administration Cabinet, in conjunction with the user agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.
(3) A solicitation of proposals for competitive negotiation shall state:
   (a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;
   (b) The date, hour, and place that written proposals shall be received;
   (c) The type of alternative delivery method involved and the associated requirements;
   (d) A description of the services sought and the procurement procedures to be followed;
   (e) Specifications, or the location where specifications may be obtained;
   (f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the commonwealth, with qualifications and price to be weighted at not
less than twenty-five (25) percent and fifty (50) percent respectively;

(g) The level or quantity of information required from each offeror to allow for equitable evaluation;

(h) The proposed method of award of contract;

(i) Other information as may be desirable or necessary to reasonably inform potential offerors of technical performance, and any other data and requirements of the procurement;

(j) The existence of a funding limitation, if determined to be in the best interest of the commonwealth;

(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the commonwealth; and

(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.

(3)(4) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer per the requirements of the competitive negotiation for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarifications or explanations of their proposal or the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.

(2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical rating systems shall be used. All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records for the procurement.

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscoring (technical) members with membership comprised of personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7), scoring members.

Section 6. Interim preproposal meetings may be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. If a proposal is not clearly marked, it may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, there is a written determination that an acceptable proposal has been submitted, (a) all proposals may be rejected and new proposals may be solicited on the basis of the same, or revised terms or (b) the procurement may be abandoned.

Section 9. If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be valid as if it was a competitively negotiated contract and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any member of the evaluation committee relative to the procurement shall be discouraged except during the selection committee interview process. Any ex parte communications between offerors and members shall be documented by each member with a written summary of all discussions setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

Section 13. An awarded contract utilizing an alternative project delivery method shall be submitted to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725.

LORI FLANERY, Secretary
APPROVED BY AGENCY: June 16, 2015
FILED WITH LRC: June 16, 2015 at 4 p.m.
CONTACT PERSON: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, September 8, 2015)

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121
STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definition. (1) “Immediate supervision” is defined...
by KRS 315.010(11). (2) "Long-term care facility" or "LTCF" means: (a) An intermediate care facility; (b) A skilled nursing facility; (c) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016; (d) An intermediate care facility for intellectually and developmentally disabled; or (e) A personal care facility. (3) "Pharmacist-in-charge" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205. (4) "Supervision" is defined by KRS 315.010(25). Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility. (2) Dispensing. (a) Medications shall be dispensed only on the medical order (for a non-controlled substance) or a prescription drug order of a licensed practitioner. (b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the: 1. Name of patient; 2. Date of issuance; 3. Name, strength, and dosage form of drug prescribed; 4. Directions for use; 5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and 6. Practitioner’s name. (3) Emergency Drugs. (a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs. (b) For expediency and efficiency, emergency drugs shall be limited in number to include controlled substances stocked pursuant to 902 KAR 55:070 that shall not exceed six (6) individual doses of six (6) different controlled substances, only thirty-six (36) items, six (6) deep of which controlled substances are stocked pursuant to 902 KAR 55:070 and whose prompt use and immediate availability are generally regarded as essential in the proper treatment of sudden and unforeseen patient emergencies. (c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use. (d) Emergency drug stock shall be monitored by the pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels. (e) Emergency drug stock shall not be stocked in a personal care facility. (4) Long Term Care Facility Pharmacy Stock. (a) Pharmacy stock of drugs in an LTCF shall not exceed fifteen (15) individual doses each of be limited in number to 150 non-controlled substances[subject items fifteen (15) deep]. (b) Pharmacy stock of drugs in a personal care facility shall not exceed five (5) individual doses each of be limited in number to thirty (30) non-controlled substances[five (5) deep]. (c) The pharmacy-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use. (d) The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock. (e) A pharmacist shall review the prescription drug or medical order before the release of medication. (f) Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels. (g) Pharmacy stock shall be used for a patient for no more than the next business day. (h) Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be replenished by: 1. A secure box delivered by the pharmacy; or 2. A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be under the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the supervision of a pharmacist on-site. JOEL THORNBURY, President APPROVED BY AGENCY: July 8, 2015 FILED WITH LRC: July 10, 2015 at 4 p.m. CONTACT PERSON: Steve Hart, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(As Amended at ARRS, September 8, 2015)

201 KAR 12:110. School license.

RELATES TO: KRS 317A.060, 317A.090
STATUTORY AUTHORITY: KRS 317A.050, 317A.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050 and 317A.060 require the Kentucky Board of Hairdressers and Cosmetologists to promulgate administrative regulations concerning licensure for the operation of a school of cosmetology. This administrative regulation establishes requirements for licensure of a cosmetology school. KRS 317A.060 requires that each school owner shall submit an application to operate a school of cosmetology, furnish proof of financial responsibility, and meet all city, county, and state zoning, building, and plumbing codes. This administrative regulation defines the process of applying for a cosmetology school license.

Section 1. Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner, in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, shall submit a financial statement indicating financial assets in the amount of $10,000 for twenty (20) students enrolled and $1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school shall submit a minimum of two (2) character references, proposed copy of student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable.

Section 4. Application for license to operate a school of cosmetology shall be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office, and any other area of the school, entrance and exits and any other area of the school.

Section 5. (1) A license to operate a cosmetology school carries the approval of this board and shall be valid only for the location and person, firm, or corporation named on the application and license. A school of cosmetology license shall not be transferable from one (1) location to another or from one (1) person, firm, or corporation to another.
Section 6. The owners, firm, or corporation operating a school of cosmetology shall notify the board in writing twenty (20) days prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership shall meet all qualifications of owning a school and have the approval of the board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools shall comply with city, county, and state zoning laws, plumbing, and building codes. The construction or renovation of the proposed school shall be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time shall be granted for good cause shown provided the request is presented, in writing, to the board. The applicant shall provide:

1. The reason for extension and the term of request; and
2. Supportive documentation of the extension request.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or to the general public concerning any information regarding the school or any student enrolled in the school, or in any way violates administrative regulations adopted by this board, shall[may] be served notice to show cause before this board why the school’s license and the instructor’s license should not be revoked.

Section 9. Any person, establishment, firm or corporation that accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and shall be required to comply with KRS Chapter 317A and 201 KAR Chapter 12 [all the provisions of law and the rules and administrative regulations of this board] by authority established in KRS 317A.090 and 317A.050.

Section 10. The board shall not license a correspondence school unless the board shall license any school of cosmetology in an establishment that teaches any other trade, profession, or business, excepting vocational training schools.

Section 11. A person who is an owner, partner, stockholder, or corporate officer, or who has any financial or other interest in the management and control of the school[s] shall not be enrolled in the school as a student.

Section 12. A school of cosmetology shall not permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes may, by proper application, be granted permission from the board to operate the classes. The school shall not operate past 10 p.m. local time, under any circumstances. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) A member of the board or an employee, unless resigned, shall not[will be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to] apply for a new school license or apply for any existing school license under KRS 317A.090 and this administrative regulation [unless any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, the board member or employee of the board shall submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.]

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee, or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applying student shall result in denial of approval of licensure. A person applying for a new school license shall complete an application with the board.

(3) The provisions of this section shall apply only to applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

Section 15. Incorporation by Reference. (1) "Application for Kentucky School of Cosmetology", April 14, 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Hairdressers and Cosmetologists, 111 St. James Court, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President
APPROVED BY AGENCY: June 10, 2015
FILED WITH LRC: June 17, 2015 at 4 p.m.
CONTACT PERSON: Charles Lykins, Administrator, 111 St James Ct., Frankfort, Ky 40601, phone 502-564-4262, fax 502-564-0481.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(g), (7), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.470
STATUTORY AUTHORITY: KRS 218A.205(3)(g), (7), 314.042, 314.103, 314.131(1)
NATIVITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(g) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education[programs], and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);
(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;
(c) Submit the fee required by 201 KAR 20:240, Section
Section 2. Education [Postbasic Program of Study] and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited educational program that prepares a registered nurse for one of the four APRN roles established under Section 12(5) of this administrative regulation, organized postbasic program of study, and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a postbasic program of study before January 1, 2005, the applicant shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses as an advanced practice registered nurse shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.042(2)(b) and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy[Association] of Nurse Practitioners Certification Program; and

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

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.”.

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses. (2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(b) or 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(b) or 20:370, Section 1(1);

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse, shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board;

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(b) or 20:370, Section 1(1);

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Court Disposition System that is within six (6) months of the date of the application; and

(c) Maintain current certification by a recognized national certifying organization.
the date of the application;
(c) Certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
(d) Letter of explanation that addresses each conviction, if applicable.
(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.
(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.
(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.
(b)1. An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification prior to its expiration date after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action.
2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.
3. If, after the APRN license has been voided, the APRN provides evidence that the certification had not lapsed, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report.
(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:
(a) Notify the board of that fact; and
(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.
(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:
(1) An accredited[postbasic] educational program for preparation for advanced practice registered nursing; or
(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus[specialty] to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational[approved organized postbasic] program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.
(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.
(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 12(2)(a)(i)(ii).
(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.
(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

Amended Administrative Regulation

SALLY BAXTER, President
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FILED WITH LRC: July 2, 2015 at 9 a.m.
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GENERAL GOVERNMENT CABINET
Amended Administrative Regulation
(As Amended at ARRS, September 8, 2015)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.011, 314.111, 314.131
STATUTORY AUTHORITY: KRS 314.111(3), 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to promulgate administrative regulations to set standards for the establishment and outcomes of nursing programs, to approve schools of nursing and courses preparing persons for advanced practice registered nurse (APRN) licensure, and to monitor standards for APRN competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes APRN programs of nursing standards.

Section 1. Definitions. (1) “APRN program coordinator” means that individual who is responsible for the oversight of the educational unit and is licensed as an APRN in the designated role and in the same population focus as the program.
(2) “APRN program of nursing” means the educational unit that prepares a person for practice and licensure as an advanced practice registered nurse [and includes secondary or distance learning sites, if applicable].
(3) “Designated Chief nursing academic officer” means the registered nurse [that individual] who has academic and administrative authority for the overall nursing program.
(4) “National nursing accrediting body” means the Accreditation Commission for Education in Nursing (ACEN), [or]
the Commission for Collegiate Nursing Education (CCNE), the Commission on Nursing Education Accreditation (CNEA), the Council on Accreditation of Nurse Anesthesia Educational Programs (COA), or the Accreditation Commission on Midwifery Education (ACME).

(5) "Preceptor" means an advanced practice registered nurse, a physician, or a physician assistant who meets the standards established in Section 4 of this administrative regulation.

Section 2. Requirements for Advanced Practice Registered Nursing Programs. (1) An educational institution that offers an APRN program of nursing shall ensure that the program:

(a) is offered by or affiliated with a college or university that is accredited under 201 KAR 20:260, Section 2(1);

(b) is a formal educational program, that is part of a doctoral, master's program, or a post-master's program in nursing with a concentration in advanced practice registered nursing and population focus as required for licensure in KRS 314.011;

(c) has presented evidence that it has applied for nursing program accreditation and meets accreditation standards; and

(d) offers a curriculum that covers the scope of practice for both the category of advanced practice registered nurse as specified in KRS 314.011 and the population focus.

(2) The clinical practice component of the curriculum shall be congruent with current national professional organizations and nursing accrediting body standards applicable to the APRN role and accredited educational guidelines for planning, implementing, and maintaining the proposed program of nursing.

(3) The program shall notify the board of any changes in hours of clinical practice or accreditation status and respond to board requests for information.

(4) The program shall have financial resources sufficient to support the educational goals of the program.

(5) The program shall establish academic and professional standards for admission to the program, progression in the program, and graduation from the program that shall be consistent with sound educational guidelines and recognized standards of professional conduct.

(6) The program shall notify the board regarding any plans to expand the program to additional locations or increase the student enrollment by more than fifty (50) percent from the previously admitted cohort.

(7) Voluntary closure of a program shall be in accordance with 201 KAR 20:360, Section 5.

Section 3. Establishing a New APRN Program of Nursing. (1) An institution may receive consultation from the board prior to establishing an APRN program of nursing.

(2) An institution that desires to establish and conduct an APRN program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 2(1)(a).

(3) An institution shall submit information in the form of a letter of intent to establish an APRN program of nursing along with the fee required by 201 KAR 20:240, Section 1(2)(a)(1)(a).

(4) When(1) the information is submitted to the board, the institution shall begin the application process with a national nursing accrediting body and the Council on Postsecondary Education, if applicable.

(5) The information shall be submitted to the board at least one (1) year in advance of the first intended admission of students.

(6) The information shall be completed under the direction of the registered nurse who shall serve as the designated chief nursing academic officer or the APRN program coordinator.

(7) The institution shall not advertise or enroll students until the board has granted developmental approval status.

(8) The information shall include:

(a) General information about the governing institution including the:

1. Mission;
2. Ownership;
3. Method of financing;
4. Accreditation;
5. Enrolment;
6. Area served; and
7. Institutional faculty qualifications; and
8. Resources that are sufficient to support defined outcomes and goals;

(b) An organizational chart of the institution and a written plan which describes the relationship of the program of nursing and its relationship to the institution;

(c) A designation of the current or desired national nursing accrediting body to be used in the development of the program;

(d) A description and rationale for the proposed type of APRN role and population focus program which includes (a) the certificate or degree to be awarded (and the population focus);

(e) Approval from the governing body of the institution proposing the APRN program of nursing or other empowered approval bodies as applicable;

(f) A copy of the curriculum vitae of the registered nurse identified as the APRN program coordinator;

(g) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(h) Evidence of support from the community of interest;

(i) A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

(j) A description of physical or virtual resources adequate to meet the needs of the faculty and students;

(k) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(l) The philosophy of the APRN program and program outcomes for graduates;

(m) Curriculum design for each identified track to include:

1. Proposed course sequence;
2. Description of courses; and
3. Credit hours delineating those credits assigned to theory and practice;

(n) The availability of clinical experiences sufficient to accommodate the number of students to include the total number of clinical hours designated for each track or population focus;

(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and

(p) Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(8) If the information in the form of a letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The proposal shall be submitted within one (1) year of the date of the approval of the information or it shall expire.

(9) A completed program proposal shall be submitted to the board by the governing institution for approval at least one (1) year prior to the first intended admission of students

(b) The program proposal shall include:

1. An organizational chart of the governing institution and a written plan which describes the organization of the program of nursing and its relationship to the governing institution;

2. A designation of the current or desired national nursing accrediting body to be used for the accreditation of the program;

3. A copy of the curriculum vitae of the APRN identified as the APRN program coordinator;

4. A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

5. The philosophy of the APRN program and program outcomes for graduates;

6. Curriculum design for each identified track to include:

a. Proposed course sequence;

b. Description of courses;

c. Credit hours delineating those credits assigned to theory and practice; and

d. The total number of clinical hours designated for each track or population focus;

7. A five (5) year plan for securing clinical sites and preceptors.
sufficient to accommodate the number of students;
8. A five (5) year plan for recruiting and retaining qualified nurse faculty; and
9. Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(10) The program shall not be announced or advertised nor students admitted until the proposal has been approved and developmental status has been granted by the board;

(11)(gi) Developmental status[approval] shall be the designation granted to an APRN program of nursing that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body. Developmental status[This designation] shall be for no more than a two (2) year period of time pending review and accreditation[approval] by a national nursing accrediting body.

(12)[(10)] When developmental status[approval] has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the chief nursing academic officer[APRN program of nursing] to notify the board of the admission and graduation of the first class.

(13)(i11) Developmental status[approval] of an APRN program shall expire[eighteen (18) months from the date of approval] if a class of students is not admitted within two (2) years of receiving developmental status.

(14) After securing formal communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board by the APRN program coordinator within thirty (30) days of receipt by the program.

(15)(i3) The APRN program coordinator shall notify the board within thirty (30) days of any change in accreditation status.

(16) The APRN program coordinator shall notify the board of pending site visits by the national nursing accrediting body and shall provide to the board copies of any formal communication[documentation submitted to the national nursing accrediting body within thirty (30) days of submission.

(17)(i5) The APRN program coordinator shall provide a copy of the report of the national nursing accrediting body to the board within thirty (30) days of its receipt by the program.

(18)(i6) The decision to grant program[full] approval by the board shall be based on review of the following:

(a) Achievement and continued[full] approval by a national nursing accrediting body; and
(b) Reports of site visits conducted by a board representative(Site visit reports by the board representative conducted) to evaluate program compliance with administrative regulations.

(19)(i9)[42] The board may grant program[full] approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 3. Compliance with National Nursing Accrediting Body Standards. An APRN program shall comply with the standards of its national nursing accrediting body[and provide the board with copies of communications necessary to maintain compliance].

Section 4. Preceptor Standards. In addition to the standards of the national nursing accrediting body, the APRN program shall comply with the preceptor standards established in this section. (1) The APRN program shall secure all necessary preceptors to students enrolled in the program. A student shall not be required to obtain their own preceptor, but may have input into the process.

(2) During the student's enrollment in the program, the student shall have some clinical experience with a preceptor who is an APRN with the same role and population focus for which the student is preparing.

(3) The preceptor who is an APRN shall have at least one (1) year of clinical experience in the role and population focus for which the student is preparing.

(a) A physician or a physician's assistant (PA) may serve as a preceptor.
(b) The physician or PA who serves as a preceptor shall have at least one (1) year of clinical experience and shall practice in the same or similar population focus for which the student is preparing.
(c) A preceptor shall not precept more than two (2) students at a time.
(d) A preceptor shall fulfill the responsibilities of a preceptor.
(e) A preceptor shall not serve in any capacity other than the role of a preceptor.
(f) A preceptor shall be a registered nurse and shall meet the requirements for preceptorship as established by the board.
(g) A preceptor shall be a registered nurse and shall meet the requirements for preceptorship as established by the board.
(h) Preceptors shall have evidence of curriculum vitae; and
(i) Preceptors shall have evidence of curriculum vitae.

Section 5. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:
(a) A current, active, unencumbered registered nurse license or privilege to practice in Kentucky;
(b) A doctorate degree earned from a university accredited by the United States Department of Education;
(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration;
(d) At least two (2) years of clinical experience; and
(e) Current knowledge of APRN practice.

(2) The qualifications for the APRN program coordinator shall include:
(a) A current, active, unencumbered APRN license or privilege to practice in Kentucky;
(b) A minimum of a master's degree in nursing or health-related field in the clinical specialty from an accredited college or university which accreditation is recognized by the U.S. Department of Education;
(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration; and
(d) At least two (2) years of clinical experience.

(3) The board shall be notified in writing of a vacancy or pending vacancy in the position of the APRN program coordinator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the APRN program coordinator vacates the position, the designated chief nursing academic officer shall submit to the board in writing:
(a) The effective date of the vacancy;
(b) The name of the APRN who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; and
(c) Status reports from the APRN program of nursing national nursing accrediting body.

(4) If there shall be a lapse between the date of the vacancy and the date the newly appointed APRN program coordinator assumes duties, the designated chief nursing academic officer or the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

(5) Progress reports shall be submitted if requested by the board.

(6) The length of the appointment of an interim APRN program coordinator shall not exceed six (6) months.

(7) Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

Section 5. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:
(a) A current, active, unencumbered APRN license to practice in Kentucky, unless the nurse faculty member will teach solely online and will not physically practice in this state in which case the nurse faculty member shall hold a current, active, unencumbered APRN license in the state in which they are located.
(b) A minimum of a master's degree in nursing or health-related field in the clinical specialty;
(c) Two (2) years of clinical experience; and
(d) Current knowledge, competence, and certification as an APRN in the role and population focus consistent with teaching.
responsibilities.

(2) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching as designated in subsection (1) of this section.

(3) Other qualified individuals may teach a non-clinical course or assist in teaching a clinical course in an APRN program of nursing within their area of expertise.

(4) Clinical preceptors may be used to enhance faculty-directed clinical learning experiences. Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and shall serve as a role model and educator to the student. Clinical preceptors shall be approved by faculty and meet the following requirements:

(a) Holds an unencumbered active license or multistate privilege to practice as a registered nurse and an advanced practice registered nurse or a physician in the state in which the preceptor practices or, if employed by the federal government, holds an unencumbered active registered nurse and an advanced practice registered nurse or a physician license in the United States; and
(b) Has a minimum of one (1) year full-time clinical experience in current practice as a physician or as an APRN within the role and population focus.

(5) A clinical preceptor shall function as a supervisor and teacher and evaluate the student’s performance in the clinical setting. The program faculty shall retain ultimate responsibility for student learning and evaluation.

(6) The preceptor may be a practicing physician or other licensed, graduate-prepared health care provider with comparable practice focus. A majority of the preceptors shall be nurses.

(7) A clinical preceptor who is an APRN shall hold:

(a) National certification in the advanced-practice category in which the student is enrolled; or
(b) Current board licensure in the advanced practice category in which the student is enrolled.

(8) A complete list of faculty members, clinical faculty, adjuncts, and preceptor appointments shall be reported to the board in writing annually.

Section 6. Curriculum. (1) An educational program offered by an accredited college or university that offers a graduate degree or post-master's certificate with a concentration in the APRN role and at least one (1) population foci shall include the following components:

(a) Clinical supervision as specified by the national certifying organizations applicable to the APRN role and population focus established in 201 KAR 20:056, Section 3(2); and
(b) Curriculum that is congruent with:
1. AACN Essentials for Masters Education for Advanced Practice Nursing if the program grants a master’s degree or post-master's certificate or AACN Essentials for Doctoral Education for Advanced Nursing Practice if the program grants a doctoral degree or
2. NLNAC Standards and Criteria Master’s and Post-Master’s Certificate if the program grants a master’s degree or post-master’s certificate or NLNAC Standards and Criteria Clinical Doctorate if the program grants a doctoral degree.

(2) APRN programs preparing for two (2) population foci or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(3) Each instructional track shall have a minimum of 500 supervised clinical hours directly related to the role and population foci, including pharmacotherapeutic management of patients.

(4) The curriculum shall contain the following three (3) separate graduate level courses in addition to APRN core courses:

(a) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents.

(b) Advanced health assessment, which includes assessment of all broad categories of agents.

(c) Advanced health management, which includes assessment of all broad categories of agents.

(5) Content specific to the role and population focus in the APRN core area shall be integrated throughout the other role and population didactic and clinical courses.

(6) The curriculum shall include:

(a) Preparation that provides a basic understanding of the principles for decision making in the identified role; and
(b) Role preparation in one (1) of the six (6) population foci identified in KRS 314.014.

(7) Preparation in a specialty area of practice is optional, but if included, it shall build on the APRN role/population-focus competencies. Clinical and didactic coursework shall be comprehensive and sufficient to prepare the graduate to practice in the APRN role and population focus.

Section 7. Students. (1) A student entering into the APRN program shall have an active, unencumbered registered nurse license.

(2) A student who wishes to complete a clinical experience in this state but is enrolled in an out of state APRN program shall have an active, unencumbered RN license in another jurisdiction, either in the U.S. or in another country. The following criteria shall be met:

(a) The APRN program of nursing is accredited by a national nursing accrediting body.

(b) The graduate program advises the student of expectations regarding student practice and required supervision.

(c) The graduate program provides direct supervision of the clinical experience and informs faculty, preceptors and clinical facilities that the student is practicing under this limited exemption.

(d) The student limits practice to what is required for completion of the graduate program requirements.

Section 8. Ongoing Approval. (1)(a) The chief nursing academic officer shall notify the board within thirty (30) days of any change in the APRN program coordinator;

(b) Approved APRN programs of nursing accredited by a national nursing accrediting body may be subject to a site visit at intervals associated with their national nursing accreditation.

(2) The board requires continuous accreditation by a national nursing accrediting body.

(3) The board may perform a site visit of a program on an announced or unannounced basis.

(4) Factors that may indicate the need for a focused site visit and that jeopardize program approval status shall include:

(a) Reported deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing’s stated philosophy, mission, program design, objectives, outcomes, or policies;

(c) Ongoing failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities including securing preceptors for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 2(4) of this administrative regulation;

(g) Withdrawal of accreditation by either the program of nursing, college, or university by a national or regional nursing accrediting body, or if accredited for less than the maximum accreditation period, the program may require additional reports regarding noncompliance;

(h) Failure to obtain approval of a change that requires board approval prior to implementation;

(i) Providing false or misleading information to students or the
Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Essentials for Master’s Education for Advanced Practice Nursing", 1996 Edition, American Association of Colleges of Nursing;
(b) "AACN Essentials for Doctoral Education for Advanced Nursing Practice", 2006 Edition, American Association of Colleges of Nursing;
(c) "NLNAC Standards and Criteria Master’s and Post-Master’s Certificate", 2008 Edition, National League for Nursing Accrediting Commission; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. [54x75]corrective action to be implemented.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of deficiencies being sent, file a plan to correct each of the deficiencies.

(c) The APRN program coordinator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board’s determination of deficiencies.

(d) If the board’s determination of deficiencies has not been contested or if the deficiencies being sent are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.

(e) If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probation.

(f) Probation approval shall be the designation granted to a program of nursing if one (1) or more standards have continued to be unmet.

(g) Following the decision of the board to place a program of nursing on probational status, the program coordinator shall be notified of the continued areas of deficiency. A new student shall not be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one (1) academic year.

(h) The APRN program coordinator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.

(i) The APRN program coordinator may, within thirty (30) days of the notice of the deficiencies being sent, request to appear before the board to contest the board’s determination of deficiencies.

(j) If the board decides to withdraw approval of a program of nursing upon the effective date of the decision the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:

(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or

(b) Assist a currently enrolled student to transfer to an approved program of nursing.

(k) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection (7) of this section shall be continuously monitored by the board until the program closes.

(l) The board may return an APRN program to full approval status if the program attains and maintains adherence to this administrative regulation.
GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), 314.103, 314.109, 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination. 

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:
(a) Submit:
1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;
4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;
5. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);[and]
6. A letter of explanation that addresses each conviction, if applicable;
7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and
8. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications.[;]
(b) Notify the board as soon as a new address is established after submitting the application;
(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;
(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and
(e) Apply to take and pass the National Council Licensure Examination; and
(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615.
(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination or until the provisional license expires, whichever comes first.

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates established in 201 KAR 20:260. The Certified List of Out-of-state Program of Nursing Graduates.
(b) If the name does not appear on the list [at], the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.
(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.
(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.
(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a) of this section and any conviction is addressed by the board.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.
(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:
(1) The candidate;
(2) Other state boards of nursing;
(3) The National Council of State Boards of Nursing, Inc.;
(4) The candidate's program of nursing; and
(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.
(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.
(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.
(3) To qualify as [direct supervision][special] pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall [at all times] be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.
(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.470 as a nurse in Kentucky.
(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).
(2)(a) Prior to applying for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course in accordance with this section.
(b) The applicant shall return the registered nurse provisional license, if applicable.
(3)(a) The course shall be taken only at an approved LPN program of nursing.
(b) The program of nursing shall seek approval of the course from the board.
The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

(4) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(2) The board may require that an applicant provide evidence of the applicant's state of residence.

Section 6[A] Nurse Licensure Compact Provisions. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

SALLY BAXTER, President
APPROVED BY AGENCY: June 12, 2015
FILED WITH LRC: July 2, 2015 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)

201 KAR 20:110. Licensure by endorsement.

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a) Have completed a state approved program of nursing equivalent to Kentucky requirements; or
(b) Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1. Name of the program of nursing completed and date of graduation; or
2. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI;

(j) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board; and

(k) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application.

(2) An application shall be valid for a period of six (6) months, except as provided for in Section 5 of this administrative regulation. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submission of the application;

(3) After six (6) months if the requirements for licensure have not been met, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(i) of this section and any conviction is addressed by the board.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five
(5) years preceding the date of the application. This applicant shall:
1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:220(20:380), which shall have been completed within two (2) years of the date of the application; or
2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.
(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.
(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a), (b), (c), (d), (e), (f), (i), (j), and (k) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.
(2) A temporary work permit shall be valid for a period not to exceed six (6) months.
(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:
(1) Accepted psychometric procedures shall be used in the development of the examination;
(2) The examination shall be available to the board in the English language;
(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;
(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;
(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;
(6) The examination shall be revised after each administration to ensure currency and security of content; and
(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(13)(144). An applicant for an LPN license pursuant to KRS 314.041(13)(144) shall meet the requirements of this administrative regulation.

Section 6. [Nurse Licensure Compact Provisions.] (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.
(2) The board may request that an applicant provide evidence of the applicant’s state of residence.

SALLY BAXTER, President
APPROVED BY AGENCY: June 12, 2015
FILED WITH LRC: July 2, 2015 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.
between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor’s supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The evaluation shall:

1. Cover a period of at least six (6) months during the earning period;

2. Be signed by the nurse’s supervisor; and

3. Include the name, address, and telephone number of the employer.

(5) A nurse who renews a license for the first time following graduation from a prelicensure program of nursing shall utilize the following methods for continuing competency validation:

(a) If employed, either:

1. The provisions of subsection (4) of this section; or

2. The provisions of subsection (4)(a) of this section and documentation of the nurse’s completion of an orientation to the employer;

(b) If not employed or is unable to provide proof of an orientation or an evaluation, the provisions of subsection (1) of this section.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:

(a) Approved by the Cabinet for Health and Family Services pursuant to KRS 314.161(a) or

(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(2) Contact hours shall be earned at least one (1) time every ten (10) years.

(b)(a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse’s Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(3)(a) Registered nurses and licensed practical nurses licensed as of July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6)(a) by December 31, 2013.

(b) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6)(a) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with the continuing competency requirements, the licensee[ba] shall be allowed to cure the noncompliance if he or she:

1. Meets the continuing competency requirements within ninety (90) days of notification of noncompliance;

2. Enters a consent decree with the board; and

3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same[a] continuing education offering within a licensure period. The board shall determine whether a continuing education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection (3) of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee;

(b) An academic course that is applicable to the nurse’s role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an [3]Application for Individual Review[3]; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards established by:

(a) Sections 2 through 7 of this administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity shall:
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(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and
(b) Be limited to the particular offering upon which the request for individual review is based.
(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President
APPROVED BY AGENCY: June 12, 2015
FILED WITH LRC: July 2, 2015 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1)
STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

201 KAR 20:370, Section 1(1)(a) or (c);
3. Notifying the board, in writing, that the requirements of the disciplinary order or agreed order have been met.
(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:
1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);
2. Submitting a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);
(f) Submitting a letter of explanation that addresses each conviction, if applicable;
(g) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and
(h) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of the last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.
1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.
2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(3)(a) If an individual applies for reinstatement of a license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of the last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.
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1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.
2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(3)(a) If an individual applies for reinstatement of a license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of the last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.
1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.
2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(3)(a) If an individual applies for reinstatement of a license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of the last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.
1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.
2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.
held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person’s failure to obtain an evaluation and the person subsequently obtains the evaluation;
2. KRS 314.075 because of a person’s submission of a bad check and the person subsequently makes the check good; or
3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on an educational loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of:
1. Court order;
2. Marriage certificate;
3. Divorce decree; or

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6)(f)(2) within three (3) years of reinstatement of the license.

SALLY BAXTER, President
APPROVED BY AGENCY: June 12, 2015
FILED WITH LRC: July 2, 2015 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

1. Hold a valid and current license issued by the board;
2. Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office electronically before midnight on October 31st, or if mailed, postmarked no later than the last day of the licensure period;
3. Submit the current fee required by 201 KAR 20:240;
4. Have met requirements of 201 KAR 20:215, if applicable;
5. Submit certified or attested copies of court records of any misdemeanor or felony convictions with a letter of explanation as required by 201 KAR 20:370, Section 1(3);
6. Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or a report if there is any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and
7. Have paid all monies due to the board.

Section 2. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

Section 3. (1) After the end of the licensure period each year, the board shall randomly select a percentage of nurses who have successfully completed renewal of the license.

(2) Those selected shall be notified in writing that, within thirty (30) days, they shall submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI.

(3) The board shall review the report received from the FBI and shall take appropriate action regarding any criminal convictions.

SALLY BAXTER, President
APPROVED BY AGENCY: June 12, 2015
FILED WITH LRC: July 2, 2015 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 8, 2015)


RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. [KRS 314.025 authorizes the Nursing Incentive Scholarship Fund to issue grants for nursing workforce competency development]
administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. **[This administrative regulation establishes criteria for submitting grant requests.]**

Section 1. Definitions. (1) “Academic year” means:
(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and
(b) For a practical nursing program, the completion of the required program.

(2) “Board” is defined by KRS 314.011(1).

(3) “Committee” means the Kentucky Nursing Incentive Scholarship Fund Grant Review Committee.

(4) “Kentucky resident” is defined by 13 KAR 2:045, Section 1(10).

(5) “Program of nursing” means a prelicensure, BSN completion, or graduate nursing program.

(6) “Successful academic progression” means, except during the last academic year preceding graduation:
(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of fifteen (15) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or
(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:
(a) Be a Kentucky resident; and
(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed Nursing Incentive Scholarship Application by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the Nursing Incentive Scholarship Application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.

Section 3. The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet as needed to review grant requests submitted pursuant to Section 11 of this administrative regulation.

(3) A member of the committee shall:
(a) Serve without compensation; and
(b) Be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:
(1) Preference categories as specified in KRS 314.025(2):
(a) Licensed practical nurses, twenty-five (25) points;
(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and
(c) Financially-needy Kentucky residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:
(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;
(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and
(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of twenty-five (25) points.

Section 4.[5.] Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The board shall first make awards to those recipients who:
1. Received an award in the previous year; and
2. Remain eligible to receive an award pursuant to Section 6(2) of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 5.[6.] Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:
(a) Has enrolled; and
(b) Is in good standing in the nursing program.

Section 6.[7.] Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:
(a) Maintains successful academic progression through the program; and
(b) Submits to the board a completed Nursing Incentive Scholarship Fund Application form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section 7.[8.] Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.

(2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

Section 8.[9.] Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:
(a) Nursing program in which he or she is enrolled within the time specified by the program of nursing; or
(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree [in its sole discretion,] to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression:
(a) This deferment shall apply for one (1) academic year.
(b) If the student fails to achieve successful academic progression after that time, repayment shall be due.

(c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section 6(2) of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral[Deferral] form.
(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral[Deferment] form shall be accompanied by a physician’s statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

Section 9[46] Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 10[11] Grant Requests. (1) More than forty (40) percent of available revenues received from fines levied by the Cabinet for Health and Family Services shall not be expended for grants in any given year.

(2) The deadline for grant requests shall be May 1 and November 1 annually.

(3) The grant request shall include:
   (a) A problem statement or purpose related to improving nursing workforce competency;
   (b) The proposed workforce development activity and how it has general applicability to the entire nursing workforce in the state;
   (c) The proposed timelines and outcomes;
   (d) The outcome measurement criteria to be used;
   (e) The amount requested with a supporting budget;
   (f) Any matching or in kind budget contributions to be received; and
   (g) The preferred funding cycle of either all funds given initially or partial funds given initially and the remainder at specified intervals.

(4) The following shall be the reporting requirements for grants that are funded:
   (a) An initial report shall be submitted to the board six (6) months following funding or at the midpoint of the grant timeline if that is sooner than six (6) months from the funding date or as directed by the board.
   (b) Interim reports shall be submitted at six (6) month intervals or as required by the board for the duration of the project funded.
   (c) A final report shall be submitted to the board within three (3) months of completion of the project. The final report shall document outcome achievements and their relationship to the fund spent.

(5) Any money that is unused for the purpose of the grant shall be returned to the fund, unless otherwise directed by the board.

Section 12[12] Incorporation by Reference. (1) The following forms are incorporated by reference:
   (a) "Nursing Incentive Scholarship Fund Application", 12/01;
   (b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;
   (c) "Nursing Incentive Scholarship Fund Contract", 10/13; and
   (d) "Nursing Incentive Scholarship Fund Promissory Note", 10/13[3].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, September 8, 2015)

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) On a lake established in subsection (2) of this section, a person shall not operate [on a lake listed in subsection (2) of this section, a] a:
   (a) House boat;
   (b) Monohull boat with a center line length exceeding twenty-two (22) feet; or
   (c) Pontoon boat with a float or deck exceeding twenty-two (22) feet, except for:
      1. Guist Creek Lake, where a pontoon boat with a float or deck up to twenty-four (24) feet may be operated; or
      2. [on a lake established in clauses a. through c. of this subparagraph, where a pontoon boat with a float or deck up to thirty (30) feet may be operated:
         a. Cedar Creek Lake;
         b. Lake Beshear; and
         c. Lake Malone.]
   (2) List of lakes:
      (a) Arrowhead Slough, Ballard County;
      (b) Beaver Creek Lake, Anderson County;
      (c) Beaver Dam Slough, Ballard County;
      (d) Bert Combs Lake, Clay County;
      (e) Big Turn Lake, Ballard County;
      (f) Big Turn Lake, Ballard County;
      (g) Briggs Lake, Logan County;
      (h) Bullock Pen Lake, Grant County;
      (i) Burnt Pond, Ballard County;
      (j) Burnt Slough, Ballard County;
      (k) Butler Lake, Ballard County;
      (l) Carnico Lake, Nicholas County;
      (m) Carpenter Lake, Daviess County;
      (n) Carter Caves Lake, Carter County;
      (o) Cedar Creek Lake, Lincoln County;
      (p) Corinth Lake, Grant County;
      (q) Cross Slough, Ballard County;
      (r) Cypress Slough, Ballard County;
      (s) Deep Slough, Ballard County;
      (t) Dennie Gooch Lake, Pulaski County;
      (u) Elmer Davis Lake, Owen County;
      (v) Fishpond Lake, Letcher County;
      (w) Goose Lake, Muhlenberg County;
      (x) Greenbo Lake, Greenup County;
      (y) Guist Creek Lake, Shelby County;
      (z) Happy Hollow Lake, Ballard County;
Section 4. A person shall not operate a boat motor greater than ten horsepower shall not exceed idle speed on:

(a) Beaver Lake, Anderson County;
(b) Lake Malone, Muhlenberg County;
(c) Lake Beshear, Caldwell County;
(d) Lake Washburn, Ohio County;
(e) Lake Chumley, Lincoln County;

Section 5. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

(a) Arrowhead Slough, Ballard County;
(b) Beaver Dam Slough, Ballard County;
(c) Bert Combs Lake, Clay County;
(d) Island Lake, Ohio County;
(e) Kentucky River WMA, Boone Tract Lakes, Henry County;
(f) Kincaid Lake, Pendleton County;
(g) Kingdom Come Lake, Harlan County;
(h) Lake Beshear, Caldwell County;
(i) Lake Chumley, Lincoln County;
(j) Lake Malone, Muhlenberg County;
(k) Lake Lauzy, Union County;
(l) Lake Reba, Madison County;
(m) Lake Washburn, Ohio County;
(n) Lebanon City Lake, Marion County;
(o) Lincoln Homestead Lake, Washington County;
(p) Little Green Sea, Ballard County;
(q) Little Turner Lake, Ballard County;
(r) Long Pond, Ballard County;
(s) Marion County Lake, Marion County;
(t) Martin County Lake, Martin County;
(u) McNeely Lake, Jefferson County;
(v) Metcalfe County Lake, Metcalfe County;
(w) Mitchell Lake, Ballard County;
(x) Muhlenberg County Lake, Ballard County;
(y) Oak Run, Ballard County;
(z) Odyssey Lake, Ballard County;
(A) Pine Ridge Lake, Ballard County;
(B) Proctor Lake, Ballard County;
(C) Quincy Lake, Ballard County;
(D) Riverbend Lake, Ballard County;
(E) Riverstone Lake, Ballard County;
(F) Sanders Lake, Ballard County;
(G) Sandy Slough, Ballard County;
(H) Shanty Hollow Lake, Warren County;
(I) Shelby Lake, Ballard County;
(J) South Lake, Ohio County;
(K) Spurlington Lake, Taylor County;
(L) Swan Lake, Ballard County;
(M) Twin Pockets Slough, Ballard County;
(N) Wilgreen Lake, Madison County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

(a) Carnico Lake, Nicholas County;
(b) Goose Lake, Muhlenberg County;
(c) Greenbo Lake, Greenup County;
(d) Island Lake, Ohio County;
(e) Lake Reba, Madison County;
(f) Lake Washburn, Ohio County;
(g) Lebanon City Lake, Marion County;
(h) Little Green Sea, Ballard County;
(i) Little Turner Lake, Ballard County;
(j) Long Pond, Ballard County;
(k) Marion County Lake, Marion County;
(l) Martin County Lake, Martin County;
(m) McNeely Lake, Jefferson County;
(n) Metcalfe County Lake, Metcalfe County;
(o) Mill Creek Lake, Wolfe County;
(p) Mitchell Lake, Ballard County;
(q) Pikeville City Lake, Pike County;
(r) Sandy Slough, Ballard County;
(s) Shelby Lake, Ballard County;
(t) South Lake, Ohio County;
(u) Spurlington Lake, Taylor County;
(v) Swan Lake, Ballard County;
(w) Twin Pockets Slough, Ballard County;
(x) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor greater than ten horsepower shall not exceed idle speed on:

(a) Beaver Lake, Anderson County;
(b) Lake Beshear, Caldwell County;
(c) Lake Chumley, Lincoln County;
(d) Lake Malone, Muhlenberg County;
(e) Lake Reba, Madison County;
(f) Lake Washburn, Ohio County;
(g) Lebanon City Lake, Marion County;
(h) Little Green Sea, Ballard County;
(i) Little Turner Lake, Ballard County;
(j) Long Pond, Ballard County;
(k) Marion County Lake, Marion County;
(l) Martin County Lake, Martin County;
(m) McNeely Lake, Jefferson County;
(n) Metcalfe County Lake, Metcalfe County;
(o) Mill Creek Lake, Wolfe County;
(p) Mitchell Lake, Ballard County;
(q) Pikeville City Lake, Pike County;
(r) Sandy Slough, Ballard County;
(s) Shelby Lake, Ballard County;
(t) South Lake, Ohio County;
(u) Spurlington Lake, Taylor County;
(v) Swan Lake, Ballard County;
TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, September 8, 2015)

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

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.
(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.
(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.
(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.
(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.
(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.
(7) "Processed fish" means a fish that has been gutted and head removed.
(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.
(9) "Single hook" means a hook with no more than one (1) point.
(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.
(11) "Slot limit" means a size range of a fish species that shall be released by an angler.
(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:
(a) Hook and line in hand; or
(b) Rod in hand.
(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the following daily creel limits and size limits established in paragraphs (a) through (k) of this subsection except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180:1. (1)
(a) Black bass daily creel limit, six (6).
1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.
2. Kentucky bass and Coosa bass, no size limit;
(b) Rock bass daily creel limit, fifteen (15);
(c) Sauger, walleye, and their hybrids daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger;
(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;
(e) Chain pickerel daily creel limit, five (5); no size limit;
(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;
(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;
(h) Crappie daily creel limit, thirty (30); no size limit;
(i) Trout:
1. No culling statewide.
2. Rainbow trout and brown trout daily creel limit, singly or in combination, eight (8), no more than three (3) of which shall be brown trout.
3. No size limit on brown trout.
4. Twelve (12) inch size limit on brown trout.
5. Brook trout, catch and release only;
(i) Redear sunfish daily creel limit, twenty (20); no size limit; and
(k) Yellow bass daily creel limit, thirty (30); no size limit.
(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.
(3) A person shall release grass carp caught from a lake owned or managed by the department.
(4) A person shall release any:
(a) Lake sturgeon; or
(b) Alligator gar.
(5) A person shall release fish:
(a) Below the minimum size limits established by this administrative regulation;
(b) Within a protected slot limit established by this administrative regulation; or
(c) Of a particular species if a person already possesses the daily creel limit for that species.
(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:
(a) Fishing;
(b) On the shoreline; or
(c) On the water.
(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:
(a) At the weigh-in site;
(b) At the release site; or
(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.
(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the following methods established in paragraphs (a) through (c) of this subsection:
(a) Bagged, sealed, and placed in a garbage dump;
(b) Donated to a charity for the purposes of human consumption; or
(c) Transferred to a conservation officer or another agent of the department.
(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:
(a) Fishing;
(b) On the shoreline; or
(c) On the water.
(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:
(a) Obtains the fish from a licensed fish propagator or other legal source; and
(b) Retains a receipt or other written proof that the fish were legally acquired.
(11) A person shall release all caught trout unless the person:
(a) Has a valid trout permit;
(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or
(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.
(12) A person fishing in an artificial bait-only area shall not attach any of the following items established in paragraphs (a)
Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (77) of this section:

(1) [Al Jolly Lake. A person shall release all flathead catfish;]
(2) [Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;]
(22) [Barbours Creek, Gun Barrel Dam, Wolfe County. Black bass aggregate creel limit, fifteen (15) inches and twenty (20) inches; daily creel limit, three (3) and five (5)];
(23) [Barley Lake.]
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).
(c) Sauer size limit, fourteen (14) inches;
(3) [Barren River Lake.]
(a) Crappie size limit, nine (9) inches.
(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.
(c) Barren River Lake shall extend up:
1. Barren River to the Highway 100 bridge;
2. Long Creek to the Highway 100 bridge;
3. Beaver Creek to the Highway 1297 bridge;
4. Skaggs Creek to the Mathews Mill Bridge; and
5. Peter Creek to the Peter Creek Road Bridge;
(4) [Beaver Lake, Anderson County.]
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Channel catfish size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad as bait;
(5) [Bent Combs Lake, Clay County. A person shall not possess shad or use shad as bait;]
(6) [Beshers Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;]
(7) [Boltz Lake, Grant County.]
(a) A person shall not possess shad or use shad as bait.
(b) Channel catfish size limit, twelve (12) inches;
(8) [Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;]
(9) [Buckhorn Lake.]
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Muskellunge size limit, thirty-six (36) inches.
(c) Crappie size limit, nine (9) inches;
(10) [Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;]
(11) [Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches;]
(12) [Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;]
(13) [Carr Creek Lake.]
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, nine (9) inches;
(14) [Carter Caves State Park Lake, Carter County.]
(a) Fishing shall be during daylight hours only.
(b) Largemouth bass.
1. There shall be a slot limit between twelve (12) and fifteen (15) inches.
2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.
(c) A person shall not possess shad or use shad as bait;
(15) [Cave Run Lake.]
(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.
(b) Smallmouth bass size limit, eighteen (18) inches.
(c) Muskellunge size limit, thirty-six (36) inches;
(16) [Cedar Creek Lake, Lincoln County.]
(a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).
(b) Channel catfish size limit, twelve (12) inches; or
(c) A person shall not possess shad or use shad as bait;]
(17) [Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;]
(18) [Corinth Lake, Grant County.]
(a) A person shall not possess shad or use shad as bait.
(b) Channel catfish size limit, twelve (12) inches;
(19) [Cumberland Lake shall extend up:]
(a) [Largemouth bass size limit, fifteen (15) inches.]
2. [Smallmouth bass size limit, eighteen (18) inches.]
3. [Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).]
4. [Crappie size limit, ten (10) inches.]
(b) [Cumberland Lake shall extend up:]
1. The Cumberland River to Cumberland Falls;
2. [The Big South Fork to Devils Jump;]
3. [The Rockcastle River to The Narrows; and]
4. [The Laurel River to Laurel River Dam;]
5. [Largemouth bass size limit, fifteen (15) inches.]
6. [Smallmouth bass size limit, eighteen (18) inches.]
7. [Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).]
4. [Crappie size limit, ten (10) inches.]
(20) [Cumberland River downstream from Barkley Lake Dam. Sauer size limit, fourteen (14) inches;]
(21) [Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except for a portion of Hatchery Creek in Russell County as established in subsection 38 of this section.]
(a) Brown trout size limit, twenty (20) inches; daily creel limit one (1).
(b) Brook trout size limit, fifteen (15) inches; daily creel limit one (1).
(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle; or
(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle;]
(22) [Dale Hollow Lake.]
(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
(b) Walleye and any walleye hybrid daily creel limit, five (5); size limit, sixteen (16) inches.
(c) Sauer daily creel limit, ten (10); size limit, fourteen (14) inches.
(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.
(e) Largemouth bass size limit, fifteen (15) inches.
(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.
(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);
(23) [Dewey Lake.]
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
Muskellunge size limit, thirty-six (36) inches;
[24][25] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
[26][27] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;
[27][28] Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.
(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.
(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;
[28][29] Elmer Davis Lake, Owen County.
(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
(b) Channel catfish size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad as bait;
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, nine (9) inches.
(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
[30][31] Floyd’s Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
[31][32] Golden Pond at the Visitors’ Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches;
[32][33] General Butler State Park Lake, Carroll County.
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
[33][34] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;
[34][35] Greenup Lake, Greenup County.
(a) A person shall not possess shad or use shad as bait.
(b) Bluegill and sunfish daily and possession limit, fifteen (15) fish;
(a) Crappie size limit, nine (9) inches.
(b) Muskellunge size limit, thirty-six (36) inches;
[36][37] Guist Creek Lake, Shelby County. Channel catfish size limit, twelve (12) inches;
[37][38] Hatchery Creek, Russell County.
(a) A person fishing for trout in the upper rip-rap area of the creek shall follow the size and creel limits for trout for the Cumberland River below Wolf Creek Dam established in subsection (5) of this section.
(b) A person fishing for trout in the lower portion of the creek, as denoted by signs, shall:
1. Only use artificial bait; and
2. Release all trout;
[38][39] Jerrico Lake, Henry County.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad as bait;
[39][40] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) inches; daily limit, twenty (20).
(c) Sauger size limit, fourteen (14) inches;
[40][41] Kentucky River WMA, Boone Tract, Benjy Kinman Lake.
(a) Largemouth bass. Catch and release only.
(b) Crappie daily creel limit, fifteen (15).
(c) Sunfish daily creel limit, fifteen (15).
(d) Catfish daily creel limit, four (4);
[41][42] Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).
(b) Crappie daily creel limit, fifteen (15).
(c) Sunfish daily creel limit, fifteen (15).
(d) Catfish daily creel limit, four (4);
[42][43] Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;
[43][44] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
[44][45] Lake Malone, Muhlenberg and Logan County.
(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
(b) Channel catfish size limit, twelve (12) inches;
[45][46] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;
[46][47] Lake Reba, Madison County.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit three (3).
(b) Channel and blue catfish size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad as bait;
[47][48] Lake Shelby, Shelby County.
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
[48][49] Laurel River Lake.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).
(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);
[49][50] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
[50][51] Leary Lake, Grant County.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(c) Channel catfish daily limit, four (4);
[51][52] Lincoln Homestead Lake, Washington County.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(c) Channel catfish daily creel limit, four (4).
(d) A person shall not possess shad or use shad as bait;
[52][53] Marion County Lake.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad as bait;
(a) Channel and blue catfish size limit, twelve (12) inches.
(b) A person shall not possess shad or use shad as bait;
[54][55] Mill Creek Lake, Powell County.
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) A person shall not possess shad or use shad as bait;
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
(b) Channel catfish daily creel limit, four (4).
(c) A person shall not possess shad or use shad as bait;
[56][57] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.
(b) Crappie size limit, nine (9) inches;
[57][58] Ohio River.
(a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(c) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(f) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(g) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(h) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(i) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

5. Dates and times of special limits.

(a) Only use artificial bait; and

(b) Release all trout.

(c) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whiteley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

4. There shall be a seasonal catch and release trout season for Swift Creek Camp in Wolfe County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water established listed in subsection (2) of this section:
Section 1. Notice Required. (1) Pursuant to KRS 149.344(11)(a), a *bad actor/logger* who has received one (1) or more bad actor designations pursuant to KRS 149.344(8) shall notify the cabinet prior to conducting logging operations.

(2) The *bad actor/logger* shall continue to notify the cabinet until all civil penalties have been paid and all site remediation required by the cabinet has been performed.

Section 2. (1)(a) Bad actor notification shall be made by letter, facsimile, email, telephone conversation, or in person.

(b) A message left on an answering machine or voice mail service shall not constitute valid notification.

(b) In the notification, the *bad actor/logger or operator* shall identify the anticipated date of harvest and the location of the timber harvesting site in sufficient detail to enable the division to locate the site in the field. The location shall be identified by:

(a) The name of the landowner;

(b) The county; and

(c) One (1) of the following methods:

1. Latitude and longitude of the site to the nearest one-tenth (1/10) of a minute or the UTM (Universal Transverse Mercator) coordinates to the nearest 100 meters;

2. USGS (United States Geological Survey) 7.5-minute topographic quadrangle map or reproduction thereof, marked to show the name of the quadrangle map, the map scale, the north arrow, and the exact location of the site; or

3. The nearest named community and the approximate distance and direction from the community to the site, the name and number of the nearest highway or street, and a description of how to reach the site from the nearest road intersection or other appropriate landmark.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: May 12, 2015
FILED WITH LRC: May 12, 2015 at noon
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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Forestry
(As Amended at ARRS, September 8, 2015)


RELATES TO: KRS 149.330, 149.332, 149.344, 149.346, 149.348

STATUTORY AUTHORITY: KRS 149.344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.344 requires the cabinet to establish notification requirements for loggers or operators who have received one (1) or more bad actor designations. This administrative regulation establishes the methods and requirements for bad actors to notify the cabinet before beginning timber harvest operations.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Channel Catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); and

(d) Rainbow trout daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) Bloomfield Park Lake, Nelson County;

(d) Bob Noble Park Lake, Nelson County;

(e) Brickyard Pond, Knox County;

(f) Camp Ernst, Boone County;

(g) Carlisle Lake, Meade County in Fort Knox;

(h) Cherokee Park Lake, Jefferson County;

(i) Dickerson Lake, Meade County in Fort Knox;

(j) Easy Walker Park Pond, Montgomery County;

(k) Fisherman's Park lakes, Jefferson County;

(l) Kingdom Come State Park Lake, Harlan County;

(m) Jacobsen Park Lake, Fayette County;

(n) James D. Beville Park Lake, Grayson County;

(o) Lake Mingo, Jessamine County;

(p) Lake Poliwog, Grant County;

(q) Lower Sportsman's Lake, Franklin County;

(r) Lusby Lake, Scott County;

(s) Madisonville City Park lakes, Hopkins County;

(t) Marion County Lake, Martin County;

(u) Maysville-Mason County Recreation Park Lake, Mason County;

(v) Middleton Mills Pond Long, Kenton County;

(w) Middleton Mills Shelterhouse Pond, Kenton County;

(x) Miller Park Lake, Marshall County;

(y) Miles Park lakes, Jefferson County;

(z) Millennium Park Pond, Boyle County;

(aa) Panther Creek Park Lake, Daviess County;

(bb) Prisoners Lake, Kenton County;

(cc) Scott County Park Lake, Scott County;

(dd) Southgate Lake, Campbell County;

(ee) Three Springs Lake, Warren County;

(ff) Tom Wallace Park Lake, Jefferson County;

(gg) Upper Sportsman's Lake, Franklin County;

(hh) Watertown Park Lake, Jefferson County;

(ii) Waverly Park Lake, Jefferson County;

(jj) Waymond Morris Park Lake, Daviess County;

(kk) Whitehall Park Lake, Madison County; and

(ll) Yellow Creek Park Lake, Daviess County.
Section 2. Vegetation Removal Permit Eligibility. (1) A permit to remove or prune vegetation in order to remove vegetative obstructions to the visibility of a noncommercial or commercial entity, including an outdoor advertising device, that are located in a public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with the terms of this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) A permit to remove or prune vegetation by a noncommercial entity or a commercial entity shall be approved by the department:
   (a) In order to improve the safety of the traveling public;
   (b) If necessary to eliminate hazards to personal property;
   (c) To enhance visibility for the travelling public;
   (d) To eliminate an unsightly condition and improve roadway aesthetics if recommended by the department’s arborist or REDA as established in Sections 4 and 5 of this administrative regulation as determined by the department during application review; or
   (e) To remove the undesirable vegetation listed on the department’s Web site at www.transportation.ky.gov/permits/.

(3) A permit to prune or remove vegetation shall not be issued:
   (a) For an illegal outdoor advertising device or if the legal status of an outdoor advertising device is in dispute;
   (b) If an applicant is required to enter through state right-of-way in order to access property for vegetation pruning or removal unless authorized by the department as part of the permit to remove vegetation;
   (c) To remove specimen trees as listed on the department’s Web site at www.transportation.ky.gov/permits/ unless recommended by the department’s arborist or REDA.

(4) A noncommercial entity or a commercial entity shall apply to the department for a permit to remove or prune vegetation by using Application for Encroachment Permit, TC 99-1(A). The form shall be submitted to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management plan.

Section 3. General Requirements for Vegetation Removal. (1) An applicant shall:
   (a) Submit a mitigation plan to replant an area if a specimen tree was removed pursuant to Section 2(3)(c) of this administrative regulation unless the department’s arborist or REDA indicates that replanting is not feasible;
   (b) Plant a designated area with noninvasive plant species that favor the bee and butterfly population if recommended by the department’s arborist or REDA;
   (c) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;
   (d) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;
   (e) Remove and dispose of cut material and debris from the state right-of-way as specified in the permit issued by the department;
   (f) If necessary, treat a tree stump with an herbicide specific to the type of work and vegetation proposed for removal;
   (g) Use a seeding and erosion control plan;
   (h) Not remove or prune a redbud tree, dogwood tree, or designated state tree without approval of the department based on the health and condition of the trees at the time of permitting;
   (i) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department’s arborist or REDA;
   (j) Remove or prune vegetation with the supervision of a certified arborist or district REDA; and
   (k) Perform work within 180 consecutive calendar days of the work start date.

(2) A permit to remove vegetation shall be granted by the department in areas designated as a beautification project if the areas have become so unsightly and overgrown that they no longer meet the criteria for a beautification project.

(3) Work shall not be performed until a completed permit application is received and approved by the department pursuant to Sections 4 or 5 of this administrative regulation.

Section 4. Noncommercial Assistance of a REDA. (1) A detailed explanation of the proposed vegetation management plan shall be included by the noncommercial entity with the submission of a TC Form 99-1(A) to the department.

(2) A non-commercial entity may use either a certified arborist or a department REDA to submit a vegetation management plan to the department. A certified arborist used by a noncommercial entity shall comply with Section 5 of this administrative regulation.

(3) The REDA shall review the submitted application to remove or prune vegetation and coordinate the process of removal with the permittee.

Section 5. Commercial Use of Arborist. (1) A commercial entity shall be required to use a certified arborist for vegetation management.

(2) A commercial applicant with three (3) active permits for vegetation removal shall not be eligible for another permit until the work on at least one (1) active permit is completed.

(3) The completed application for a permit to remove or prune vegetation shall include:
   (a) A general description of work to be performed;
   (b) The address and telephone number of the party applying for a permit;
   (c) A photograph, location map, and a detailed and scaled drawing showing the location of the vegetation proposed to be trimmed or removed;
   (d) A vegetation management plan submitted by a certified arborist that shall include:
      1. A general description of vegetation proposed to be removed and the work to be performed;
      2. An inventory of trees larger than four (4) inches in diameter as measured twelve (12) inches from ground level within the area proposed for vegetation removal or pruning; and
      3. Documentation that the applicant consulted with the United States Fish and Wildlife Service regarding a potential for the proposed work to affect federally listed, threatened, or endangered species;
   (e) Proof that the applicant has obtained local, state, or federal approval as required;
   (f) The name and address of the contractor that will be performing the work;
   (g) A signed release from property owners whose property lines front the right-of-way where vegetation management is proposed;
   (h) A signed consent from a private property owner that gives the permittee access from the private property to the work site;
   (i) A seeding and erosion control plan pursuant to the department’s manual, Standard Specifications for Road and Bridge Construction;
   (j) The proposed work schedule including the beginning and ending date of work;
   (k) A payment bond and a performance bond until the project is released by the department; and
   (l) Proof of liability insurance equal to or in excess of $3 million.

The department shall be listed as the “Certificate Holder.”

(4) A permit shall not be granted if the vegetation removal will adversely affect federally listed, threatened, or endangered species unless the United States Department of Fish and Wildlife
Section 6. Notice of Violation; Appeals. (1) The department shall notify the permittee by certified letter if a violation of this administrative regulation has occurred.

(2) If the permittee fails to respond to the certified notice or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action against the permittee.

(3) (a) A vegetative permit holder aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the notice.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

Section 7. Penalties. (1) A vegetative permit holder who violates this administrative regulation shall be fined a civil penalty of $500 as established in KRS 177.990(2). A corrective plan by a certified arborist or REDA shall be submitted within thirty (30) days of the notice of violation.

(2) The department shall deny a permit that contains intentionally false or misleading information.

(3) If a tree dies related to executing the vegetative plan, within two (2) years of being pruned or planted, the permittee shall remove the dead tree and:

(a) Repay the department for the loss of the state-owned tree; or

(b) Replant the area.

(4) If damage occurs, related to executing the vegetative plan, to vegetation not included in the vegetative permit, the permit holder shall be fined in accordance with subsection (1) of this section and shall be required to replant the area.

(5) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the vegetation management plan.

(6) The permittee shall indemnify the department and the cabinet pursuant to the Application for Encroachment Permit, TC Form 99-1(A) in the event that claims are brought against the department or cabinet by third parties for damages sustained in the course of executing a vegetation management plan.

Section 8. Implementation. If a provision of this administrative regulation is found to be invalid by a court of competent jurisdiction, this administrative regulation shall be invalid in its entirety.

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

(a) "Agreement for Services to be Performed," TC 99-22, January 2015[December, 2014].

(b) Application for Encroachment Permit, TC 99-1(A), January 2015[December, 2014]; and

(c) "Standard Specifications for Road and Bridge Construction", June 15, 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the cabinet's Web site at http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx

NANCY ALBRIGHT, Deputy State Highway Engineer
MICHAEL W. HANCOCK, P.E., Secretary
D. ANN DANIEL, Office of Legal Services
APPROVED BY AGENCY: July 13, 2015
FILED WITH LRC: July 15, 2015 at 8 a.m.
CONTACT PERSON: D. Ann Daniele, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, September 8, 2015)

603 KAR 10:002. Definitions for 603 KAR Chapter 10.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation defines the terms used in 603 KAR Chapter 10.

Section 1. Definitions. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more an advertising device has:

(a) Not displayed advertising matter;

(b) Displayed obsolete advertising matter;

(c) Needed substantial repairs due to lack of maintenance; or

(d) Only advertised for the sale, rent, or lease of the advertising device.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertising device" is defined by KRS 177.830(5).

(4) "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main-traveled ways of a divided:

1. Interstate;

2. Parkway;

3. Federal-aid primary highway; or

4. Federal-aid primary highway; or

(b) That is the centerline of the main-traveled way of a nondivided:

1. Interstate;

2. Parkway;

3. National highway system; or


(5) "Commercial or industrial activities" [in an unzoned area] is defined by KRS 177.830(9).

(6) "Commercial or industrial land use" means an activity in a zoned area within 660 feet of the interstate or parkway right of way carried on for financial gain but not including:

(a) The leasing of property for residential purposes;

(b) An activity conducted in a building principally used as a residence;

(c) An agricultural, forestry, ranching, grazing, farming, or...
related enterprise, including a wayside fresh produce stand;
(d) Operation, maintenance, or storage of an advertising device;
(e) A railroad track or minor siding; or
(f) A facility generally recognized as a utility such as a cell tower.
(7) "Commercial or industrial zone" means an area adjacent to a highway zoned to permit business, commerce, or trade as established in local ordinance or regulation.
(8) "Conditional permit" means a permit issued by the department that requires the removal of one (1) or more existing advertising devices prior to construction activity at the permitted location.
(9) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.
(10) "Destroyed" means a nonconforming[an] advertising device requiring repair due to weather related events, vandalism, or other criminal or tortious acts.
(11) "Electronic advertising device":
(a) Means an advertising device with a message that is changed by an electronic or mechanical process or remote control, including rotating cubes, rotating vertical triangular slats, turning lights on and off, glow cubes, light emitting diodes, cathode ray tubes, and fluorescent discharge or other similar technology; and
(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the message face.
(12) "Encroachment" means an addition to the permitted area of the facing of an advertising device.
(13) "Erect":
(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and
(b) Does not mean the change of a message or routine maintenance.
(14) "Extension" means an addition to an advertising device that is temporary, subject to specific size requirements, and removed with the message.
(15) "Face" means the part of the advertising device including trim and background that contains the message and informative content.
(16) "Facing" means the faces displayed on the same advertising device and oriented in the same direction of travel.
(17) "Federal aid primary highway" is defined by KRS 177.830(3) and pursuant to 23 U.S.C. 131 refers to the existence of the highway on June 1, 1991.
(18) "Highway" means:
(a) An interstate, parkway, national highway system, or federal-aid primary highway depicted by the Transportation Cabinet on http://maps.kytc.ky.gov/PAROA/; and
(b) A public road maintained by the department.
(19) "Interstate" is defined by KRS 177.830(2).
(20) "Main traveled way":
(a) Means the traveled way of a highway on which through traffic is carried; and
(b) Does not mean frontage roads, turning roadways, or parking areas.
(21) "NIT" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light in an electronic advertising device[billboard display].
(22) "Non-billboard" means an off-premise advertising device located on a federal-aid primary highway or a national highway system highway that is not located on the property it is advertising and is limited to advertising for a city, church, or civic club located within the community in which the advertising device is erected.
(23) "Nonconforming advertising device" means an off-premise advertising device that at one (1) time was lawfully erected but does not comply with a:
(a) Current state law or administrative regulation; or
(b) Changed condition such as:
1. A change in zoning;
2. The relocation or reclassification of a highway;
3. A change in restriction on size, space, or distance; or
4. The abandonment of required business or businesses.
(24) "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.
(25) "Off-premise advertising device" means an advertising device that contains a message relating to an activity or product that is foreign to the site on which the advertising device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for rental income.
(26) "On-premise advertising device":
(a) Means an advertising device that consists solely of the name of the establishment or that identifies the establishment’s principal or accessory products or services offered on the property; and
(b) Does not mean an advertising device that brings rental income to the property owner.
(27) "Protected area" means an area:
(a) Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or
(b) Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway.
(28) "Scenic byway" is defined by KRS 177.572.
(29) "Scenic highway" is defined by KRS 177.572.
(30) "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the message face.
(31) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.
(32) "Unzoned commercial or industrial area" is defined by KRS 177.830(8).
(33) "Urban area" is defined by KRS 177.830(10).
(34) "Urbanized protected area" means an area within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway with a population of 50,000 or more as demonstrated by the United States Department of Commerce, United States Census Bureau.
(35) "Visible" means a message:
(a) Or a part of the static advertising device structure capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity on a scenic highway; or
(b) Capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity in a protected area not on a scenic highway.

NANCY ALBRIGHT, Deputy State Highway Engineer
MICHAEL W. HANCOCK, P.E., Secretary
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: July 13, 2015
FILED WITH LRC: July 15, 2015 at 8 a.m.
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.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, September 8, 2015)

603 KAR 10:010. Static advertising devices.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for
advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131; the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise static advertising devices [KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices that are no longer in compliance with state law or administrative regulation. KRS 177.890 authorizes the Commissioner of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. Compliance with the “Highway Beautification Act,” 23 U.S.C. Section 131, 23 U.S.C. Section 131(d) conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices which are more stringent than required by the general federal mandate. Commonw. v. G.L.G., Inc., Ky., 937 S.W.2d 709 (1997) ruled that the exemption established in KRS 177.860(4) did not require a commercially or industrially developed area in which the billboard was located be zoned commercial or industrial if the billboard otherwise complied with applicable local zoning ordinances].

Section 1. General Conditions Relating to Off-Premise Static Advertising Devices. (1) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to 603 KAR 10:021[10:0220].

(2) A static advertising device within 660 feet of the right-of-way shall be prohibited unless the device:
   (a) Is not visible from the main traveled way of an interstate, parkway, national highway system, or federal-aid primary highway;
   or
   (b) Complies with applicable zoning ordinances and regulations of a county or city.

(3) A static advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(4) The erection or existence of a static advertising device shall be prohibited in a protected area if the device:
   (a) Advertises an activity that is prohibited by law;
   (b) Is abandoned or discontinued;
   (c) Is not clean and in good repair;
   (d) Is not securely affixed to a substantial structure permanently attached to the ground;
   (e) Directs the movement of traffic;
   (f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;
   (g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;
   (h) Includes or is illuminated by flashing, intermittent, or moving lights on or associated with the device;
   (i) Uses lighting, unless the lighting is:
      1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of the interstate, parkway, national highway system, or federal-aid primary highway;
      2. Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; or
      3. Of a luminance less than 300 nits;
   (j) Is erected or maintained upon a tree;
   (k) Is painted or drawn on rocks or another natural feature;
   (l) Is erected upon or overhanging the right-of-way; or
   (m) Is mobile, temporary, or vehicular.

(5) A static advertising device shall not exceed the maximum size established in KRS 177.863(3)(a) and may contain up to two (2) advertisements per facing pursuant to KRS 177.863(3)(b).

(6) An on-premise advertising device that has more than two (2) faces shall not have an interior angle between two (2) facings larger than forty-five (45) degrees.

(7) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(8) A static advertising device that utilizes lighting to illuminate the advertising device shall use white lights.

(9) The name of the owner of a static advertising device shall:
   (a) Be legible from the main traveled way;
   (b) Not be larger than twenty (20) square feet;
   (c) Be shown without other owner information; and
   (d) Not be considered an advertisement.

(10) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway for a distance of 660 feet.

Section 2. Off-Premise Static Advertising Devices on Interstates and Parkways. (1) If it is visible from the main traveled way of an interstate or parkway and meets the permitting criteria established in this administrative regulation, a static advertising device located in a protected area of an interstate or parkway shall be permitted by the department.

(2) A permit shall not be issued unless a static advertising device:
   (a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances and regulations;
   and
   (b) Is erected or maintained in:
      1. A protected area of an interstate or parkway that is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or
      2. Was zoned commercial or industrial and included a commercial or industrial land use on September 21, 1959.

   (3) A static advertising device shall not be closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

   (4) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 50 feet of another off-premise static advertising device on the same side of the interstate or parkway.

   (5) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of an off-premise electronic advertising device visible in the same direction of travel.

Section 3. Off-Premise Static Advertising Devices on National Highway System and Federal-Aid Primary Highways. (1) A static advertising device visible from the main traveled way of a national highway system or federal-aid primary highway shall be permitted by the department if the device:

   (a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances; and
   (b) Is erected and maintained in a protected area of a national highway system or federal-aid primary highway if:
      1. [insert commercial or industrial zone]; or
      2. [insert an unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of]
the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

(2)(a) A non-billboard off-premise static advertising device shall be prohibited on or over a state-owned right-of-way.

(b) A non-billboard off-premise static advertising device shall not affect the spacing requirements for off-premise static advertising devices on national highway system and federal-aid primary highways.

(c) A non-billboard off-premise static advertising device with multiple messages shall be limited to an overall facing size of no more than 150 square feet, and each individual message shall be limited to eight (8) square feet.

(d) Non-billboard off-premise static advertising devices shall be separated by at least 200 feet.

(e) A permit shall not be required for a non-billboard advertising device.

Section 4. Nonconforming Static Advertising Devices. (1) A nonconforming static advertising device in a protected area shall not require a permit and shall continue to exist if the device is:

(a) Not abandoned or discontinued;

(b) Subject to only routine maintenance;

(c) In compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at the time of the erection; and

(d) Substantially the same as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming advertising device shall be submitted electronically to the department pursuant to the following table:

<table>
<thead>
<tr>
<th>Dept. Highways' District #</th>
<th>Submittal Year</th>
<th>Submittal Period*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 &amp; 7</td>
<td>Odd</td>
<td>January 1 - April 30th</td>
</tr>
<tr>
<td>2 &amp; 4</td>
<td>Even</td>
<td>January 1 - April 30th</td>
</tr>
<tr>
<td>3 &amp; 9</td>
<td>Odd</td>
<td>May 1st - August 31st</td>
</tr>
<tr>
<td>6 &amp; 8</td>
<td>Even</td>
<td>May 1st - August 31st</td>
</tr>
<tr>
<td>5 &amp; 11</td>
<td>Odd</td>
<td>September 1st – December 31st</td>
</tr>
<tr>
<td>10 &amp; 12</td>
<td>Even</td>
<td>September 1st – December 31st</td>
</tr>
</tbody>
</table>

*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming static advertising device to a fine of $250 per permit pursuant to KRS 177.990(2).

(6)(a) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed.

(b) A transfer of ownership for a nonconforming advertising device shall be completed on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming advertising device [The following shall be considered] Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing an advertising message;

(d) The change of existing nonstructural external light fixtures for energy efficiency;

(e) Replacement of nuts, bolts, or nails;

(f) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(g) Rebuilding a destroyed advertising device.

(8) The following shall not be considered routine maintenance and shall be prohibited:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type[that result in increased economic life] such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination;

(d) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(9) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation, and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 5. On-premise Static Advertising Devices. (1) An on-premise static advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise static advertising device shall be erected on the property where the business is located and; (a) [Not located inside or adjacent to the activity boundary line]; or

(b) [On the property where the business is located and]

(3) An on-premise static advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit shall be considered within the activity boundary line.

(4) An on-premise static advertising device that complies with this administrative regulation shall only be erected:

(a)1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances as established in KRS 177.860(4).

(5) If further than fifty (50) feet outside the activity boundary line, an on-premise static advertising device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(6)(a) More than one (1) on-premise static advertising device or one (1) on-premise electronic advertising device shall not be located at a distance greater than fifty (50) feet outside the activity boundary line.

(b) No measurements for the placement of an on-premise static advertising device for an industrial park, the service road shall be considered within the activity boundary line for the industrial park.

(8) An on-premise static advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise static advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses conducted at the location; or

(b) Include a display area used to advertise on-premise

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activities.

(11) An on-premise advertising device shall not:
(a) Be of such intensity as to cause glare or impair the vision of a driver;
(b) Move or have moving or animated parts;
(c) Be erected or maintained on a tree;
(d) Be painted or drawn on rocks or another natural feature; or
(e) Be erected upon or overhanging the right-of-way.

(12) An on-premise advertising device shall not affect the spacing requirements of an off-premise device as established in KRS 177.863(2)(d).

(13) Extensions of a facing up to fifteen (15) percent shall be allowed:
(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the device as established in KRS 177.863(3)(a); or
(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of an advertising device as established in subsection (5)(4)(b) of this section.

(14) An on-premise advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 6. Scenic Highways and Byways. (1) After the designation of a scenic highway by the Transportation Cabinet, additional off-premise static advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for static advertising devices located on scenic byways as those located on scenic highways.

(3) Only routine maintenance shall be performed on an off-premise static advertising device legally in existence on the date of the scenic highway designation.

Section 7. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to an off-premise static advertising device on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of a nonconforming static advertising device, a permit shall be required from the department for a static advertising device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be good until the next renewal period.

(4) An application for a static advertising device permit shall be made on a completed Application for Off-Premise Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals. A renewal shall be made on a completed Advertising Device Biennial Certification Form, TC Form 99-20E. An incomplete or inaccurate submission shall not be considered.

(7) If submitting a biennial renewal, the permittee shall certify that the off-premise static advertising device meets the permit requirements of this administrative regulation.

(b) If the static advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for a static advertising device shall be submitted electronically to the department pursuant to the following schedule:

<table>
<thead>
<tr>
<th>District #</th>
<th>Submittal Year</th>
<th>Submittal Period*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 &amp; 7</td>
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<td>January 1–April 30th</td>
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<td>Even</td>
<td>September 1–December 31st</td>
</tr>
</tbody>
</table>

*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit an update within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming static advertising device to a fine of $250 per permit pursuant to KRS 177.990(2).

(10) A static advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a static advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved static advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:
(a) Enlargement of the device;
(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;
(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
(d) The addition of lights, either attached or unattached, to help illuminate the static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit;
(e) The addition of bracing, guy wires, or other reinforcement;
(f) A change in the location of the structure; or
(g) A change in the direction of the face.

(12) The permit for an off-premise static advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 8. Notice of Violations; Appeals. (1) The department shall notify the owner of the static advertising device by certified letter that the static advertising device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 9 of this administrative regulation.

Section 9. Penalties. (1) A static advertising device owner who violates a provision of this administrative regulation shall be assessed a penalty of $500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Off-Premise Advertising Device", TC Form
(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013; and
(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx. (Definitions. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device has:
(a) Not displayed any advertising matter;
(b) Displayed obsolete advertising matter; or
(c) Needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential to the primary business activity which takes place on the property. In an industrial park, such areas shall be considered within the activity boundary line for the industrial park as a separate entity.

(3) "Advertising device" or "device" means as defined in KRS 177.830(5).

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:
(a) Leasing of property for residential purposes;
(b) Agricultural activity or animal husbandry; or
(c) Operation of a business establishment of the device.

(3) "Commercially or industrially developed area" means:
(a) Any area within 100 feet (thirty and five tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and
(b) Within the area there was a commercial or industrial enterprise in existence on September 21, 1959;

2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959.

(10) "Commercial or industrial zone" means as defined in KRS 177.830(2).

(11) "Comprehensively zoned" means, as it is applied to EAP highways only, that each parcel of land under the jurisdiction of a zoning authority has been placed in some zoning classification.

(12) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) "Destroyed" means damage to an advertising device in excess of fifty (50) percent of the device:
(a) Including:
1. Supports;
2. Poles;
3. Guys;
4. Struts;
5. Panels;
6. Facing; and
7. Bracing; and
(b) That to be structurally and visually acceptable, requires adding:
1. A guy or strut;
2. New supports or poles by splicing or attaching to an existing support;
3. Separate new auxiliary supports or poles;
4. New or replacement peripheral or integral structural bracing or framing;
5. New or replacement panels or facing.

(14) "Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on premise activities.

(15) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities if performed as an incident to:
(a) The change of an advertising message; or
(b) Customary maintenance; or
(c) Repair of an advertising device.

(16) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(9) and 23 U.S.C. 103(b) and as it existed on June 1, 1991.

(17) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) "Interstate highway" means as defined in KRS 177.830(2) and 23 U.S.C. 131.

(19) "Legible" means capable of:
(a) Being read without visual aid by a person of normal visual acuity; or
(b) Conveying an advertising message to a person of normal visual acuity.

(20) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 U.S.C. 103 which for the purpose of outdoor advertising shall exclude the highways which are part of the interstate, parkway, or FAP system of highways.

(22) "Nonbillboard off-premise advertising device" means, as it is applicable to EAP and NHS highways only, an advertising device that is not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally, or locally known religious or nonprofit organization.

(23) "Nonconforming advertising device" means an off-premise advertising device that was lawfully erected but:
(a) Does not comply with the provisions of a subsequent:
1. State law; or
2. Administrative regulation; or
(b) Later fails to comply with state law or administrative regulation due to changed conditions similar to the following:
1. Zoning change;
2. Highway relocation;
3. Highway reclassification; or
4. Change in a restriction on size, spacing or distance.

(24) "Official sign" means a sign:
(a) Located within the highway right-of-way; and
(b) Installed by or on behalf of:
1. The Department of Highways; or
2. Another public agency having jurisdiction; and
(c) Which meets one (1) of the following purposes:
1. Denotes the location of underground utilities;
2. Is required by a federal, state, or local government to delineate the boundaries of a;
3. Guides;
4. Struts;
5. Panels;
6. Facing; and
7. Bracing; and
Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:
   a. Directional signs allowing or prohibiting the use of the highway;
   b. Signs listing the location of underground utilities;
   c. Signs allowed on a toll road;
   d. Signs showing a toll charge.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device on an interstate, parkway, NHS, and FAP highway.

(1) FHWA/Kentucky agreement for the control of outdoor advertising.

d. In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(5) Nonroutine maintenance on a nonconforming device. Performance of routine maintenance on a nonconforming device shall not be subject to only routine maintenance.

(a) The owner of a nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if it is:
   a. Not destroyed, abandoned or discontinued;
   b. Subjected to only routine maintenance;
   c. In conformance with local zoning or sign or building restrictions at the time of the erection; and
   d. In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(6) Vandalized nonconforming advertising device. To the extent that a nonroutine maintenance of a nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if it is:

(a) Not destroyed, abandoned or discontinued;
(b) Subjected to only routine maintenance;
(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and
(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

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(d) The owner of the vandalized nonconforming advertising device shall not resect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(7) Required measuring methods.

(a) To establish a protected area, the distance from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet (201.7 meters) inside urban area boundaries and to the horizon outside urban area boundary lines.

(b)1. A V-shaped or back-to-back type billboard advertising device shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(e) The spacing between advertising devices shall be measured as described in KRS 177.863(9).

(f) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) A V-shaped, double-faced, or back-to-back billboard advertising device shall be considered as specified in KRS 177.863(3)(b);

(c)1. A billboard advertising device may contain two (2) messages per day. If the device does not exceed the maximum size stated in KRS 177.863(3)(a).

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device.

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where the two (2) separate panels or facings are not touching:

a. There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

b. The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(e) If lit, a billboard advertising device shall be illuminated by white lights.

(f) Criteria for on-premise advertising devices. The following criteria shall be applicable to an on-premise advertising device located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line.

(b)1. There shall not be more than one (1) on-premise device located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) If further than fifty (50) feet from the activity boundary line, an on-premise advertising device shall not exceed:

1. Twenty (20) feet (6.09 meters) in:

a. Length;

b. Width; or
c. Height;

2. 150 square feet (thirteen and eight-tenths (13.8) square meters) in area:

a. Including border and trim; and

b. Excluding supports.

(d)1. An on-premise advertising device shall not be located more than four hundred (400) feet (121.9 meters), measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. If taking measurements for the placement of an on-premise industrial park sign as described in paragraph (i) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. If taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(i) An advertising device other than one (1) listed here shall not be located as to be visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:

1. One (1) indicating the name and address of the owner, lessee, or occupant of the property on which the advertising device is located;

2. One (1) showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. One (1) advertising the sale or leasing of the property upon which the advertising device is located;

5. One (1) setting forth the advertisement of an activity conducted on or the sale of a product or service on the property where the advertising device is located;

6. A sign with a maximum area of eight (8) square feet (0.743 square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall not advertise an activity, service, or business other than that conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by a flashing, intermittent, or moving light shall not be used except to advertise an activity, service, or product available on the property on which the sign is located or to promote a public service program.

1. The advertising message may contain words, phrases, sentences, symbols, trade marks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display, may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include an art animation or graphic that portrays motion, except for movement of a graphic onto or off of the sign board.

(i) A brand or trade name shall not be advertised on an on-premise advertising device if the sale of a product or service with the brand or trade name is incidental to the primary activity, service, or business.

(j) An industrial park type on-premise advertising device which
shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain the:

1. Name of the industrial park;
2. City or county associated with the industrial park; or
3. Name of the individual business or industry located in the industrial park.

4. A single on-premise sign erected for a shopping center, mall, or other combined business location may:
   1. Identify each of the individual businesses conducted at the location; or
   2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of highways to be a legal advertising device. An advertising device closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a)1. A billboard advertising device may be erected or maintained in a protected area of an interstate or parkway highway if:
   a. The area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation; and
   b. The advertising device complies with the following provisions:
      (i) KRS 177.830 through 177.890;
      (ii) This administrative regulation; and
      (iii) Applicable county or city zoning ordinances.
   2. A business or industry on which the designation as a commercially or industrially developed area was based is nonconforming, the owner shall be notified.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b)1. A billboard advertising device designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadways in a manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(c)1. Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the first encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

2. If a business or industry on which the designation as a commercially or industrially developed area was based is nonconforming, the owner shall be notified.

(d) The distance between the first encountered establishment and the last encountered establishment shall not exceed 1620 feet.

(e) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(f) The first perpendicular line shall be drawn 100 feet from the outer edge of the first encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(g) The second perpendicular line shall be drawn 100 feet from the outer edge of the last encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(h) The distance between the first encountered establishment and the last encountered establishment shall not exceed 1620 feet.

(i) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(j) The first perpendicular line shall be drawn 100 feet from the outer edge of the first encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(k) The second perpendicular line shall be drawn 100 feet from the outer edge of the last encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(l) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(m) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(n) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(o) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(p) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(q) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(r) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(s) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(t) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(u) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(v) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(w) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(x) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(y) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

(z) Each perpendicular line shall extend for a distance of 660 feet (201.1 meters) from the outer edge of the right-of-way of the controlled highway.

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Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising device may be permitted in a protected area of an NHS or FAP highway if it is located in an unzoned commercial or industrial area or a commercial or industrial zone and if the device complies with applicable state, county, or city zoning ordinances or administrative regulations.

(a) It shall be legal to have a permitted billboard advertising device in an unzoned commercial or industrial area or a commercial or industrial zone if the device complies with applicable state, county, or city zoning ordinances or administrative regulations.

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
3. Moves or has animated or moving parts;
4. Painted or drawn on rocks or another natural feature;
5. Exceeds 1,250 square feet (116.1 square meters) in area.
6. Includes an official sign, or
7. Uses lighting, unless it is:

(a) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(b) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area".

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
3. Moves or has animated or moving parts;
4. Painted or drawn on rocks or another natural feature;
5. Exceeds 1,250 square feet (116.1 square meters) in area.
6. Includes an official sign, or
7. Uses lighting, unless it is:

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
in an unzoned commercial or industrial area shall be 300 feet (ninety-one and four-tenths (91.4) meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipality which does not have comprehensive zoning.

(a) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(l) An advertising device which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary line and shall be measured 700 feet (213.4 meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on over the state-owned right-of-way of a NHS or FAP highway.

(c) More than one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization shall not be erected in each direction of travel on a NHS or FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) A church or civic club type nonbillboard advertising device which shall be limited in area to eight (8) square feet (0.072 square meters) shall not contain a message other than the following:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.072 square meters) in area.

(2) Public service sign criteria. A public service sign may be allowed on school bus shelter if it conforms to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 square meters) in area including border and trim.

(b) The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

(c) The sign shall not contain any other message.

(3) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation shall be required for an off-premise advertising device on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a) Application for an advertising device permit shall be made on Transportation Cabinet form TC-99 as revised in October 1997. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device.

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a first-come, first-served basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map.
2. Applicant’s plot plan.
3. Location, milestone and sign plans for the advertising device.
4. A copy of all applicable local permits;
5. A copy of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph, drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky’s advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit;

(b) The advertising device which is not located on state-owned highway right of way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a) If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or
Corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. If the permittee or owner disagrees with a notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:

(a) Contact the person who sent the notice to:
1. Request reconsideration;
2. Attempt to correct a problem with his advertising device; or
3. Provide additional information to the Department of Highways.

(b) File an appeal in accordance with Section 9 of this administrative regulation.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Payment of just compensation shall be determined by:

(a) An appraisal;

(b) A value finding;

(2) A nonconforming advertising device shall not qualify for just compensation if it:

(a) Is:
1. Destroyed;
2. Abandoned; or
3. Discontinued;

(b) Receives more than routine maintenance; or

(c) Does not comply with the provisions of 1. Section 4(3) of this administrative regulation; or

2. KRS 177.863.

Section 9. Appeal Procedure. (1)(a) A party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation shall file a writ of mandamus or petition the Transportation Cabinet to impose the outdoor advertising device.

(3) The sponsor of a scenic byway application for a highway shall not be allowed or permitted after the date of the designation of the highway as scenic.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.

(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.

(3) The sponsor of a scenic byway application for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways:

<table>
<thead>
<tr>
<th>Milepoints</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Cordell Hull Highway in Barren County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KY 70 - From 1.65 miles west of KY 90 - 5.118</td>
<td>KY 90 - from KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).</td>
<td>5.118 5.359</td>
</tr>
<tr>
<td>US 68 - from US 31EX to US 31EX.</td>
<td>1.368</td>
<td>1.588</td>
</tr>
<tr>
<td>(b) Old Kentucky Turnpike in Larue County:</td>
<td></td>
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<tr>
<td>US 31E - from the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.</td>
<td>7.300</td>
<td>20.735</td>
</tr>
<tr>
<td>(c) Old Kentucky Turnpike in Nelson County:</td>
<td></td>
<td></td>
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<tr>
<td>US 31E - from the Larue County Line to US 62 in Bardstown.</td>
<td>0.00</td>
<td>14.205</td>
</tr>
<tr>
<td>US 150 - from US 62 to entrance of Old Kentucky Home State Park.</td>
<td>0.00</td>
<td>-0.240</td>
</tr>
<tr>
<td>(d) Shakertown Road in Mercer County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US 68 - From 1-1/2 miles east of Shaker Village to 1-1/2 miles west of Shaker Village.</td>
<td>15.652</td>
<td>13.252</td>
</tr>
<tr>
<td>(e) Duncan Hines Scenic Highway in Warren County:</td>
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<tr>
<td>KY 1161 - From US 31W (south) to Edmonson County Line.</td>
<td>11.641</td>
<td>12.850</td>
</tr>
<tr>
<td>US 31W - from Duncan Hines former home to KY 446 overpass.</td>
<td>14.589</td>
<td>17.669</td>
</tr>
<tr>
<td>(f) Duncan Hines Scenic Highway in Edmonson County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KY 101 - From Washington County Line to KY 260 at Rhoad.</td>
<td>9.004</td>
<td>4.131</td>
</tr>
<tr>
<td>KY 259 - From KY 101 at Rhoda to KY 70 (east).</td>
<td>9.242</td>
<td>12.096</td>
</tr>
<tr>
<td>KY 70 - From KY 259 (south) to KY 259 (north).</td>
<td>12.388</td>
<td>9.999</td>
</tr>
<tr>
<td>KY 259 - From KY 238 at Bee Spring to KY 738.</td>
<td>18.998</td>
<td>17.568</td>
</tr>
<tr>
<td>(g) Great River Road in Fulton County:</td>
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<td></td>
</tr>
<tr>
<td>KY 239 - From Hickman County Line to KY 94 in Cavoys.</td>
<td>6.379</td>
<td>3.812</td>
</tr>
<tr>
<td>KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.</td>
<td>0.000</td>
<td>10.902</td>
</tr>
<tr>
<td>KY 94 - From KY 1099 east of Hickman to KY 239 in Cavoys.</td>
<td>13.642</td>
<td>22.121</td>
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<tr>
<td>(h) Great River Road in Hickman County:</td>
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<tr>
<td>KY 239 - From Fulton County Line to KY 123.</td>
<td>0.000</td>
<td>3.753</td>
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<tr>
<td>KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.</td>
<td>10.048</td>
<td>15.728</td>
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<tr>
<td>KY 129 - From Bottery Road in South Columbus to KY 58.</td>
<td>20.882</td>
<td>24.787</td>
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<tr>
<td>(i) Pine Mountain Road in Letcher County:</td>
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<td>US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.</td>
<td>17.308</td>
<td>9.155</td>
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<td>(j) US 88 Segment 1 in Boyle County:</td>
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<tr>
<td>US 88 - From US 150 in Perryville to US 150 in Perryville.</td>
<td>7.366</td>
<td>7.476</td>
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<td>(k) US 88 Segment 1 in Mercer County:</td>
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<td>US 88 - From US 127 at Moreland Avenue to Jessamine County Line.</td>
<td>6.762</td>
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<td>(l) US 88 Segment 1 in Jessamine County:</td>
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<td>US 88 - From Mercer County Line to 0.5 miles south of KY 1980.</td>
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<td>(m) US 88 Segment 2 in Fayette County:</td>
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<td>US 88 - From Swigert Avenue to Bourbon County Line.</td>
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<td>(n) US 88 Segment 2 in Bourbon County:</td>
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<td>US 27/88 - From Fayette County Line to US 58X in Paris.</td>
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<td>6.765</td>
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<td>US 58X - From 10th Street to 8th Street in Paris.</td>
<td>1.366</td>
<td>1.487</td>
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<tr>
<td>US 68X - From Paris Bypass to North Middletown Road in Paris.</td>
<td>2.583</td>
<td>2.772</td>
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<td>US 68 - From US 68X to the Nicholas County Line.</td>
<td>2.360</td>
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<td>(o) US 88 Segment 2 in Nicholas County:</td>
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<tr>
<td>US 88 - From Bourbon County Line to KY 0.000</td>
<td>3.717</td>
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</table>
Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

<table>
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<tr>
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<tr>
<td>9.075</td>
<td>2.272</td>
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</tr>
</tbody>
</table>

(1) Adair County:
- KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.
- KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.
- KY 61 - From KY 80 in Columbia to Green County Line.

(2) Allen County:
- US 231 - From US 31E northwest of Scottsville to Warren County Line.
- US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.

(3) Anderson County:
- US 127 - From Mercer County Line to US 427 Bypass.
- US 127 - From US 127 Bypass to Franklin County Line.
- KY 151 - From US 127 Bypass to Franklin County Line.

(4) Ballard County:
- US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.
- US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Keuli to McCracken County Line.
- KY 121 - From Carlisle County Line to 4th Street in Wickliffe.

(5) Barren County:
- KY 70 - From KY 70 at Cave City to KY 80.
- US 38 - From US 31E (South Green Street) to KY 90 at Broadway.
- KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).
- KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.
- US 36 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).
- US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).
- US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.
- US 31E - From Allen County Line via Glasgow Bypass to KY 90.

(6) Bell County:
- US 25E - From Tennessee State Line to Harlan County Line.

(7) Bourbon County:
- KY 1085 - From KY 2014 via Old US 26E to Knox County Line.

(8) Boyd County:
- US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.
- US 460 - From Scott County Line to Paris Bypass.
- US 68X - From 10th Street via Main Street to 8th Street in Paris.
- US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.

(9) Boyle County:
- US 23 - From Lawrence County Line via Court Street in Catlettsburg and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.

(10) Bracken County:
<table>
<thead>
<tr>
<th>County</th>
<th>Description</th>
<th>Length</th>
<th>Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(11) Breathit County</td>
<td>from Perry County Line to Wolfe County Line</td>
<td>0.00</td>
<td>27.505</td>
</tr>
<tr>
<td>(12) Breckinridge County</td>
<td>from Grayson County Line to KY 79</td>
<td>0.00</td>
<td>7.901</td>
</tr>
<tr>
<td>KY-259 - from Grayson County</td>
<td>Line to KY 79</td>
<td>5.294</td>
<td>14.990</td>
</tr>
<tr>
<td>KY-2199 - from Hopkinsville</td>
<td>to US 60X (Business)</td>
<td>0.00</td>
<td>2.500</td>
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<tr>
<td>US 60 - from US 60X (Business)</td>
<td>via the Cloverport and Hardinsburg Bypass to the Meade County Line</td>
<td>3.500</td>
<td>21.788</td>
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<tr>
<td>(13) Bullitt County</td>
<td>from Spencer County Line via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line</td>
<td>0.00</td>
<td>5.185</td>
</tr>
<tr>
<td>(14) Caldwell County</td>
<td>from US 641 from Lyon County Line to Crittenden County Line</td>
<td>0.00</td>
<td>4.289</td>
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<tr>
<td>(15) Calloway County</td>
<td>from US 612 to Graves County Line</td>
<td>44.076</td>
<td>24.456</td>
</tr>
<tr>
<td>US 641 - from Tennessee State</td>
<td>Line via Murray to Marshall County Line</td>
<td>0.00</td>
<td>17.444</td>
</tr>
<tr>
<td>(16) Campbell County</td>
<td>from US 27 to Pendleton County Line via new bridge to Ohio State Line</td>
<td>0.00</td>
<td>22.622</td>
</tr>
<tr>
<td>KY 8 - from Kenton County Line</td>
<td>to I-471 underpass</td>
<td>0.00</td>
<td>0.998</td>
</tr>
<tr>
<td>KY 1120 - from Kenton County</td>
<td>Line to York Street</td>
<td>0.00</td>
<td>0.668</td>
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<tr>
<td>KY-1900 - from US 27 to KY 8</td>
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<td>2.813</td>
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<tr>
<td>KY-4171 - from US 27 to I-471</td>
<td>(Eastbound I-275 Overpasses)</td>
<td>0.00</td>
<td>0.729</td>
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<tr>
<td>KY-9 - from Pendleton County</td>
<td>Line to north limits of I-275 Interchange</td>
<td>0.00</td>
<td>17.978</td>
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<tr>
<td>(17) Carroll County</td>
<td>from Hickman County Line to proposed location of the Great River Road.</td>
<td>0.00</td>
<td>10.725</td>
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<tr>
<td>US 61 - from a point on US 61</td>
<td>Mainline via the proposed Great River Road to the Ballard County Line</td>
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<td>1.880</td>
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<tr>
<td>US 94 - from Hickman County</td>
<td>Line via the proposed Great River Road to proposed US 51</td>
<td>0.00</td>
<td>9.000</td>
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<tr>
<td>KY-121 - from Graves County</td>
<td>Line to Ballard County Line</td>
<td>0.00</td>
<td>9.714</td>
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<tr>
<td>(18) Carter County</td>
<td>from Elliot County Line to US 60 in Grayson</td>
<td>0.00</td>
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<tr>
<td>KY-1 - from US 60 to KY 9</td>
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<tr>
<td>KY-9 - from KY 1 and KY 7 to</td>
<td>Lewis County Line</td>
<td>0.00</td>
<td>18.282</td>
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<tr>
<td>(19) Casey County</td>
<td>from Russell County Line to Lincoln County Line</td>
<td>0.00</td>
<td>23.719</td>
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<tr>
<td>US 127 - from Russell County</td>
<td>Line to Lincoln County Line</td>
<td>0.00</td>
<td>23.719</td>
</tr>
<tr>
<td>(20) Christian County</td>
<td>from Tennessee State Line to end of north exit ramp of Pendrylee Parkway</td>
<td>0.00</td>
<td>13.611</td>
</tr>
<tr>
<td>US 41A - from Tennessee State</td>
<td>Line to north limits of Hopkinsville at KY 91/1682</td>
<td>0.00</td>
<td>6.190</td>
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<tr>
<td>US 41LP - from KY 107 to</td>
<td>north limits of Hopkinsville at KY 91/1682</td>
<td>0.00</td>
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<td>KY 3493 - from US 41A at a</td>
<td>point south of Hopkinsville to KY 107</td>
<td>0.00</td>
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<td>US 41 - from Todd County Line</td>
<td>to southbound exit ramp of the Pendrylee Parkway</td>
<td>0.00</td>
<td>13.611</td>
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<td>(21) Clark County</td>
<td>from Madison County Line to KY 1958</td>
<td>0.00</td>
<td>6.360</td>
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<td>KY 627 - from KY 267 to north</td>
<td>limits of the I-64 interchange</td>
<td>0.00</td>
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<td>KY-627 - from southern limits</td>
<td>of I-64 interchange to Bourbon County Line</td>
<td>9.154</td>
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<tr>
<td>(22) Clay County</td>
<td>from south limits of interchange range of Daniel Boone Parkway to US 421</td>
<td>7.104</td>
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<tr>
<td>US 421 - from KY 80 to Jackson</td>
<td>County Line</td>
<td>0.00</td>
<td>16.815</td>
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<tr>
<td>US 275 - from Crawford County</td>
<td>to US 60 via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line</td>
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<td>US 628 - from US 60 to US 60</td>
<td>(Lewisport Road)</td>
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<td>US 60 - from Owensboro Belline</td>
<td>to US 60 (Lewisport Road)</td>
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<td>US 60 - from US 60 Bypass West</td>
<td>of Owensboro to Hancock County Line</td>
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<td>US 60S - from KY 54 to Owensboro</td>
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<td>US 431 - from US 431 (Frederica Street)</td>
<td>east limits of US 60 Bypass Interchange</td>
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<td>US 431 - from McLean County</td>
<td>Line to 2nd Street</td>
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<td>US 2245 - from US 431 (Frederica Street)</td>
<td>via 5th Street to US 621 (Lewis Street)</td>
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<td>US 231 - from US 60 Bypass via</td>
<td>Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line</td>
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<td>US 2235 - from US 60 via Triplet Street to US 60.</td>
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<td>US 1487 - from US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street</td>
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<td>(27) Edmonson County</td>
<td>from KY 101 to KY 259 at Rhonda</td>
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<td>KY 259 - from KY 101 at Rhonda</td>
<td>to KY 70 eastbound</td>
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<td>KY 70 - from KY 259 southbound</td>
<td>to KY 259 northbound</td>
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<td>KY 269 - from KY 70 westbound</td>
<td>to Grayson County Line</td>
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<td>(28) Elliott County</td>
<td>from Hopkinsville</td>
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<td>11.909</td>
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<tr>
<td>US 68 - from Trigg County Line</td>
<td>to Todd County Line</td>
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<td>KY 1682 - from US 68 to Pennyrile Parkway</td>
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<td>0.00</td>
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<td>US 41 - from US 68 to US 68 in Hopkinsville</td>
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KY 3199 - From US 60 in Hawesville to another junction with US 60. .000 3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road. 13.666 14.270
KY 3199 - From another junction with US 60 to the Breckinridge County Line. 3.301 5.558
KY 69 - From US 60 at Hawesville to Indiana State Line. 13.080 13.972
(41) Hardin County:
US 31W - From Western Kentucky Parkway to US 31W. 202 3.704
US 31W - From US 31W Bypass to Meade County Line. 18.818 33.040
US 31W - From Meade County Line to Jefferson County Line. 33.040 37.143
KY 61 - From Larue County Line to US 31W. .000 6.309
(42) Harlan County:
US 119 - From Bell County Line along existing and proposed routes to Letcher County Line. .000 39.182
US 421 - From Virginia State Line to Leslie County Line. .000 27.632
(43) Harrison County:
US 37 - From bourbon County Line to Pendleton County Line. .000 19.472
(44) Henderson County:
US 41A - From Dixon Street to the northernmost intersection with US 41. 13.235 17.760
US 60 - From Union County Line to US 41A (Dixon Road). .000 10.435
KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennville Parkway. .000 6.201
(45) Henry County:
KY 56 - From Shelby County Line to KY 20 west to Eminence. .000 1.408
KY 22 - From KY 55 south to KY 55 north. 7.420 7.522
KY 55 - From KY 22 east to US 421. 1.408 4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville. .000 6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line. 6.434 25.144
(46) Hickman County:
US 61 - From Fulton County Line to Carlisle County Line. .000 14.451
KY 239 - From Fulton County Line to KY 123. 0.000 3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hawhill. 10.048 15.788
KY 123 - From Battery Road in South Columbus to KY 58. 20.882 21.727
Proposed FAP 94 - From KY 123 at Hawhill along Cole and Chalk Bluff Roads to KY 123 at South Columbus. .000 6.000
KY 58 - From KY 123 to KY 80 at Columbus. 0.573 0.761
KY 80 - From KY 58 to KY 123. .000 1.526
KY 123 - From KY 80 to Carlisle County Line. 21.787 22.958
(47) Hopkins County:
KY 281 - From east limits of interchange ramps of Pennville Parkway to US 44. .000 .712
US 44A - From US 44 and KY 281 to Webster County Line. .000 13.278
(48) Jackson County:
KY 30 - From Laurel County Line to Owosky County Line. .000 20.919
US 421 - From Clay County Line to Rockcastle County Line. .000 29.585
(49) Jefferson County:
US 31W - From Hardin County Line via Dixie Highway, Benham Lane, 22nd Street, Dueenel Street and 21st Street to US 31 east at Main and 2nd Streets. .000 22.135
US 150 - From Main Street via 21st Street and 22nd Street to I-64. .000 .741
US 150T - From 22nd Street to 21st Street. .000 .089
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana. .000 1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets. .000 17.987
US 42 - From Baxter Avenue to US 60. .000 .805
US 42 - From I-264 to KY 841. 6.779 8.961
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65. .000 30.250
KY 841 - From I-71 ramps to US 42. 34.758 37.006
KY 841 - From KY 841 to KY 1230 (Cane Run Road) to I-264. .000 7.593
US 60 - From US 42 to Story Avenue. .000 .429
(50) Jessamine County:
US 27 - From the Garrard County Line to Fayette County Line. .000 15.070
US 68 - From Mercer County Line to Fayette County Line. .000 12.060
(51) Johnson County:
US 6 - From Floyd County Line to Lawrence County Line. .000 18.386
US 460 - From Magoffin County Line to US 23 near Paintsville. .000 7.899
KY 321 - From Floyd County Line to US 23 north of Paintsville. .000 9.562
KY 40 - From US 460 to KY 321. 8.741 9.293
(52) Kenton County:
KY 8 - From 4th Street to the Campbell County Line. 6.434 7.662
KY 1120 - From I-75 to Campbell County Line. .000 1.212
KY 15 - From Letcher County Line to Perry County Line. .000 9.380
KY 80 - From Perry County Line to Floyd County Line. .000 20.093
(53) Knox County:
US 25E - From Bell County Line to Laurel County Line. .000 26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed). .000 2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E. .000 1.621
KY 3085 - From Bell County Line via Old US 25E to junction with US 25E. .000 2.449
(54) Laurel County:
KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line. .000 14.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line. 6.900 20.725
(55) Lawrence County:
US 25E - From Knox County Line in Corbin to west limits of 1.75 ramps. .000 2.024
US 25E - From Daniel Boone Parkway in London to KY 490. 13.612 16.315
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<tr>
<th>County</th>
<th>Description</th>
<th>Miles</th>
<th>Kilometers</th>
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<tr>
<td>KY 490</td>
<td>From US 25 to KY 30 at East Bernstadt.</td>
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<td>KY 20</td>
<td>From KY 490 to Jackson County Line.</td>
<td>1.404</td>
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<td>KY 80</td>
<td>From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.</td>
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<td>KY 102</td>
<td>From west ramps of I-75 to the Daniel Boone Parkway east of London.</td>
<td>18.190</td>
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<td>(57) Lawrence County</td>
<td>US 23 - From Johnson County Line to Boyd County Line.</td>
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<td>US 649 - From US 23 to Martin County Line.</td>
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<td>(58) Lee County</td>
<td>KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.</td>
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<td>KY 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).</td>
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<td>KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.</td>
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<td>(60) Letcher County</td>
<td>KY 15 - From US 119 at Whitesburg to KY 7 North at Leoma.</td>
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<td>KY 7 - From KY 15 to KY 15.</td>
<td>12.497</td>
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<td>KY 15 - From KY 7 South in Leoma to Knott County Line.</td>
<td>9.230</td>
<td>14.845</td>
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<td>US 23 - From Virginia State Line along existing and proposed alignment to Pike County Line.</td>
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<td>US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.</td>
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<td>(61) Lewis County</td>
<td>KY 9 - From Carter County Line to Mason County Line.</td>
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<td>KY 9C - From KY 10 to KY 8 south of Quinicy.</td>
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<td>KY 9 - From KY 8C south of Quinicy to Greenup County Line.</td>
<td>28.575</td>
<td>46.034</td>
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<td>(62) Lincoln County</td>
<td>US 27 - From Pulaski County Line via Stanford to Garrard County Line.</td>
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<td>US 127 - From Casey County Line via Hustonville to Boyle County Line.</td>
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<td>US 150 - From Boyle County Line to US 150 Bypass.</td>
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<td>US 150B - From US 150 to US 150.</td>
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<td>US 150 - From US 150/US 150 Bypass near Prospectville Road to Rockcastle County Line.</td>
<td>8.705</td>
<td>14.005</td>
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<td>(63) Livingston County</td>
<td>US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.</td>
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<td>US 62 - From Marshall County Line via Lake City to Lynn County Line.</td>
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<td>(64) Logan County</td>
<td>US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.</td>
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<td>US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.</td>
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<td>US 431 - From Tennessee State Line to Muhlenberg County Line.</td>
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<td>US 68 - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.</td>
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<td>(65) Lyon County</td>
<td>US 3172 - From KY 73 via Old US 68 to Warren County Line.</td>
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<td>US 62 - From Livingston County Line to US 641 at Fairview.</td>
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<td>US 641 - From US 62 at Fairview to Caldwell County Line.</td>
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<td>(66) Magoffin County</td>
<td>US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).</td>
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<td>US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.</td>
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<td>US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Bellline Highway, and Division Street to the Livingston County Line.</td>
<td>13.544</td>
<td>21.799</td>
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<td>US 62 - From US 60 to US 68.</td>
<td>12.881</td>
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<td>US 68 - From US 62 to Marshall County Line.</td>
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<td>(67) McCracken County</td>
<td>US 27 - From Tennessee State Line to Pulaski County Line.</td>
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<td>US 90 - From US 27 to Whitley County Line.</td>
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<td>(68) McLean County</td>
<td>US 431 - From Muhlenberg County Line to Daviess County Line.</td>
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<td>(69) Madison County</td>
<td>KY 1295 - From Garrard County Line to KY 52.</td>
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<td>KY 52 - From KY 1295 via Lancaster Avenue to KY 876.</td>
<td>5.444</td>
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<td>KY 954 - From Garrard County Line to KY 21.</td>
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<td>KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.</td>
<td>6.176</td>
<td>9.956</td>
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<td>US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.</td>
<td>2.863</td>
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<td>US 421 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.</td>
<td>9.115</td>
<td>14.686</td>
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<td>KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).</td>
<td>2.097</td>
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<td>US 25 - From US 421 via Big Hill Avenue to KY 876.</td>
<td>11.960</td>
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<td>US 421 - From US 25 to Rockcastle County Line.</td>
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<td>US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.</td>
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<td>US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.</td>
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<td>KY 627 - From US 25 west of I-75 to Clark County Line.</td>
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<td>(70) Magoffin County</td>
<td>KY 114 - From US 460 to Floyd County Line.</td>
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<td>US 460 - From Morgan County Line to Johnson County Line.</td>
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<td>(71) Marion County</td>
<td>US 68 - From Taylor County Line to KY 55 (Walnut St).</td>
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<td>KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St Marys Road).</td>
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<td>KY 49 - From KY 49 (St Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).</td>
<td>17.815</td>
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<td>US 68 - From KY 49 to KY 30 (Proctor Knott Avenue).</td>
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<td>KY 55</td>
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<td>Proctor Knott Avenue via Walnut and Spalding Avenue to Washington County Line.</td>
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<td>KY 58</td>
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<td>From Graves County Line to KY 80.</td>
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<td>KY 60</td>
<td>16.926</td>
<td>From KY 58 to US 68.</td>
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<td>28.095</td>
<td>From McCracken County Line to Trigg County Line.</td>
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<td>US 641</td>
<td>19.422</td>
<td>From Calloway County Line to US 62.</td>
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<td>12.081</td>
<td>From I-24 to Livingston County Line.</td>
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<td>US 641S</td>
<td>3.519</td>
<td>From US 641 to Purchase Parkway.</td>
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<td>KY 448</td>
<td>8.326</td>
<td>From Purchase Parkway to US 641.</td>
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<td>KY 45</td>
<td>6.605</td>
<td>From KY 40 at a point west of Inez to KY 3 northbound south of Inez.</td>
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<td>KY 2</td>
<td>10.019</td>
<td>From KY 45 westbound via Inez Bypass to KY 45 eastbound.</td>
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<td>KY 45</td>
<td>7.632</td>
<td>From KY 2 southbound via Inez Bypass to KY 40 southeast of Inez.</td>
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<td>KY 40</td>
<td>20.280</td>
<td>From KY 45 southeast of Inez to West Virginia State Line.</td>
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<td>KY 448</td>
<td>4.682</td>
<td>From Lawrence County Line to KY 40 at a point west of Inez.</td>
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<td>KY 11</td>
<td>8.452</td>
<td>From Fleming County Line to KY 9.</td>
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<td>US 62</td>
<td>18.000</td>
<td>From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.</td>
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<td>KY 9</td>
<td>19.554</td>
<td>From Lewis County Line to Bracken County Line.</td>
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<td>KY 546S</td>
<td>4.600</td>
<td>From KY 9 to Ohio State Line via proposed New Bridge.</td>
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<td>US 31W</td>
<td>3.827</td>
<td>From Hardin County Line to Hardin County Line.</td>
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<td>US 60</td>
<td>15.644</td>
<td>From Breckinridge County Line to US 31W.</td>
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<td>KY 144</td>
<td>26.665</td>
<td>From US 60 to KY 448 near Bunk Grave.</td>
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<td>4.392</td>
<td>From KY 144 to KY 1051 (Brandeburg Bypass).</td>
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<td>2.248</td>
<td>From KY 448 via Brandenburg Bypass to KY 79.</td>
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<td>KY 79</td>
<td>9.912</td>
<td>From KY 1051 via Brandenburg Bypass to Indiana State Line.</td>
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<td>US 127</td>
<td>4.402</td>
<td>From Boyle County Line via Danville Road to US 68.</td>
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<td>US 68</td>
<td>20.104</td>
<td>From US 127 at Mooreland Avenue to Jessamine County Line.</td>
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<td>17.150</td>
<td>From US 68 to Anderson County Line.</td>
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<td>KY 90</td>
<td>11.719</td>
<td>From Barren County Line to Cumberland County Line.</td>
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<td>US 460</td>
<td>8.281</td>
<td>From Bourbon County Line to KY 686 (Mount Sterling Bypass).</td>
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<td>US 460</td>
<td>3.460</td>
<td>From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.</td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>10.702</td>
<td>From south urban limits of Mount Sterling to Menifee County Line.</td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>22.151</td>
<td>From Menifee County Line via West Liberty to Elliot County Line.</td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>11.683</td>
<td>From Wolfe County Line to US 460.</td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>3.764</td>
<td>From Menifee County Line via West Liberty to Magoffin County Line.</td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>28.634</td>
<td>From Menifee County Line via West Liberty to Magoffin County Line.</td>
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<td>US 460</td>
<td>27.779</td>
<td>From Menifee County Line via West Liberty to Magoffin County Line.</td>
<td></td>
</tr>
<tr>
<td>US 31E</td>
<td>27.598</td>
<td>From US 31E via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.</td>
<td></td>
</tr>
<tr>
<td>US 150</td>
<td>2.682</td>
<td>From US 62 to Washington County Line.</td>
<td></td>
</tr>
<tr>
<td>US 68</td>
<td>12.211</td>
<td>From Kentucky County Line to Robertson County Line.</td>
<td></td>
</tr>
<tr>
<td>US 68</td>
<td>12.211</td>
<td>From Kentucky County Line to Robertson County Line.</td>
<td></td>
</tr>
<tr>
<td>US 127</td>
<td>24.687</td>
<td>From Franklin County Line to KY 65 at Brexley.</td>
<td></td>
</tr>
<tr>
<td>US 35</td>
<td>4.132</td>
<td>From US 127 to Gallatin County Line.</td>
<td></td>
</tr>
<tr>
<td>KY 30</td>
<td>11.206</td>
<td>From Jackson County Line to KY 11 north.</td>
<td></td>
</tr>
<tr>
<td>KY 11</td>
<td>14.327</td>
<td>From KY 30 to Lee County Line.</td>
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<tr>
<td>US 27</td>
<td>19.422</td>
<td>From Harrison County Line to Campbell County Line.</td>
<td></td>
</tr>
<tr>
<td>KY 9</td>
<td>4.339</td>
<td>From Bracken County Line to Campbell County Line.</td>
<td></td>
</tr>
<tr>
<td>KY 15</td>
<td>25.179</td>
<td>From Knott County Line at Vicco to Breathitt County Line.</td>
<td></td>
</tr>
<tr>
<td>KY 80</td>
<td>16.862</td>
<td>From KY 15 to Knott County Line.</td>
<td></td>
</tr>
<tr>
<td>US 23</td>
<td>35.123</td>
<td>From Letcher County Line along proposed and existing alignments to Floyd County Line.</td>
<td></td>
</tr>
<tr>
<td>KY 461</td>
<td>8.441</td>
<td>From KY 80 to Rockcastle County Line.</td>
<td></td>
</tr>
<tr>
<td>US 27</td>
<td>3.504</td>
<td>From McCreary County Line to Lincoln County Line.</td>
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<tr>
<td>KY 808</td>
<td>30.693</td>
<td>From US 27 to KY 80.</td>
<td></td>
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<tr>
<td>KY 80</td>
<td>4.169</td>
<td>From KY 80 to KY 80 bypass to Laurel County Line.</td>
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<tr>
<td>KY 90</td>
<td>4.169</td>
<td>From Wayne County Line to US 27.</td>
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</tr>
<tr>
<td>KY 461</td>
<td>8.441</td>
<td>From KY 80 to Rockcastle County Line.</td>
<td></td>
</tr>
<tr>
<td>US 68</td>
<td>1.357</td>
<td>From Nicholas County Line to Fleming County Line.</td>
<td></td>
</tr>
<tr>
<td>US 68</td>
<td>8.811</td>
<td>From Nicholas County Line to Fleming County Line.</td>
<td></td>
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1171
<table>
<thead>
<tr>
<th>Route</th>
<th>Description</th>
<th>Length</th>
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<tbody>
<tr>
<td>US 150</td>
<td>From Lincoln County Line to US 25 in Mount Vernon</td>
<td>.000</td>
</tr>
<tr>
<td>US 25</td>
<td>From I-75 to US 150</td>
<td>11.764</td>
</tr>
<tr>
<td>US 421</td>
<td>From Jackson County Line to Madison County Line</td>
<td>.000</td>
</tr>
<tr>
<td>KY 461</td>
<td>From Pulaski County Line to US 25</td>
<td>.000</td>
</tr>
<tr>
<td>US 25 (2)</td>
<td>From KY 461 to I-75</td>
<td>15.018</td>
</tr>
<tr>
<td>(93) Rowan County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KY 32</td>
<td>From Fleming County Line to south limits of I-64 interchange</td>
<td>.000</td>
</tr>
<tr>
<td>(94) Russell County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US 127</td>
<td>From Clinton County Line to Casey County Line</td>
<td>.000</td>
</tr>
<tr>
<td>(95) Scott County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US 460</td>
<td>From Franklin County Line to proposed Georgetown Bypass near Great Crossings</td>
<td>.000</td>
</tr>
<tr>
<td>Proposed Georgetown Bypass</td>
<td>From US 460 Mainline near Great Crossings to US 25</td>
<td></td>
</tr>
<tr>
<td>US 460B</td>
<td>From US 26 via US 460 to KY 240</td>
<td>.000</td>
</tr>
<tr>
<td>US 460</td>
<td>From US 62 US 460 to Bourbon County Line</td>
<td>8.593</td>
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<tr>
<td>(96) Shelby County:</td>
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<tr>
<td>KY 55</td>
<td>From I-64 via Taylorsville Road to US 60</td>
<td>6.246</td>
</tr>
<tr>
<td>KY 55</td>
<td>From KY 43 KY 268 to Henry County Line</td>
<td>9.131</td>
</tr>
<tr>
<td>US 60</td>
<td>From KY 55 South (Taylorsville Road via Midland Trail and Main Street to KY 55 North (Boone Station Road)</td>
<td>8.599</td>
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<tr>
<td>KY 236B</td>
<td>From south end of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55</td>
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<tr>
<td>KY 63</td>
<td>From I-64 to US 60 (Frankfort Road via E. Eden Road)</td>
<td>6.188</td>
</tr>
<tr>
<td>US 421</td>
<td>From Henry County Line to Henry County Line</td>
<td>.000</td>
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<tr>
<td>(97) Simpson County:</td>
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<td></td>
</tr>
<tr>
<td>US 31W</td>
<td>From south limits of I-65 interchange to KY 100</td>
<td>2.300</td>
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<tr>
<td>KY 100</td>
<td>From US 31W Mainline to I-65 ramps east of I-65</td>
<td>9.675</td>
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<tr>
<td>(98) Spencer County:</td>
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<tr>
<td>US 31E</td>
<td>From Nelson County Line to Bullitt County Line</td>
<td>.000</td>
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<tr>
<td>(99) Taylor County:</td>
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<td></td>
</tr>
<tr>
<td>KY 55</td>
<td>From Adair County Line to US 68</td>
<td>.000</td>
</tr>
<tr>
<td>US 68</td>
<td>From KY 55 via Broadway to Marion County Line</td>
<td>4.939</td>
</tr>
<tr>
<td>(100) Todd County:</td>
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<td></td>
</tr>
<tr>
<td>US 41</td>
<td>From Tennessee State Line to Christian County Line</td>
<td>.000</td>
</tr>
<tr>
<td>US 79</td>
<td>From Tennessee State Line to Logan County Line</td>
<td>.000</td>
</tr>
<tr>
<td>US 68</td>
<td>From Christian County Line to Logan County Line</td>
<td>.000</td>
</tr>
<tr>
<td>(101) Trigg County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US 68</td>
<td>From Marshall County Line to Christian County Line</td>
<td>.000</td>
</tr>
<tr>
<td>US 68X</td>
<td>From US 68 west of Cadiz to US 68 east of Cadiz</td>
<td>0.000</td>
</tr>
<tr>
<td>KY 3488</td>
<td>From US 68 east of Cadiz via Old US 68 to US 68 west of I-24</td>
<td>0.000</td>
</tr>
<tr>
<td>(102) Trimble County:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>US 421</td>
<td>From Henry County Line to US 42 South</td>
<td>.000</td>
</tr>
</tbody>
</table>

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Section 12. No Encroachment Permits for Vegetation Control.
An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5-150 for the clearing or trimming of vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) “The FHWA/Kentucky Agreement for the Control of Outdoor Advertising” between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and


(c) “Measurement of Commercially or Industrially Developed Area,” a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

NANCY ALBRIGHT, Deputy State Highway Engineer
MICHAEL W. HANCOCK, P.E., Secretary
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: July 13, 2015
FILED WITH LRC: July 15, 2015 at 8 a.m.
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.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, September 8, 2015)

603 KAR 10:021. Electronic advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.95-A(2)
STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131
NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise electronic advertising devices.

Section 1. General Conditions Relating to Off- Premise Electronic Advertising Devices. (1) An electronic advertising device visible from the main travelled way on an interstate, parkway, national highway system, or federal-aid primary highway shall be prohibited in a protected area unless the device is located in an urban area or urbanized area.

(2) An advertising device in a protected urban area shall be:

(a) A legal, but not a nonconforming, static advertising device in existence or approved pursuant to [by] a permit issued within one (1) calendar year prior to [as] the effective date of this administrative regulation which is proposed for conversion to an electronic advertising device;

(b) Within 660 feet of right-of-way; and

(c) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices.

(3) An electronic advertising device in an urbanized protected area shall be:

(a) 1. Within 660 feet of right-of-way; and

2.[1] Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices; or

(b) [2][2] Compliant with a variance that has been granted by a local governing body such as a planning and zoning commission.

(4) An off-premise electronic advertising device shall not be converted to an off-premise static advertising device prior to receiving a permit pursuant to 603 KAR 10:010.

(5) An electronic advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(6) The erection or existence of an electronic advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely attached to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Is erected or maintained upon a tree;

(i) Is erected upon or overhanging the right-of-way;

(j) Has a facing larger than 672 square feet;

(k) Has more than one (1) face per facing;

(l) Is a non-billboard electronic advertising device; or

(m) Is mobile, temporary, or vehicular.

(7) An on-premise advertising device shall not affect spacing requirements for an off-premise electronic advertising device.

(8) An electronic advertising device shall not contain extensions to the face.

(9) Interior angles between two (2) facings of an electronic advertising device shall not exceed forty-five (45) degrees.

(10) The name of the owner of an electronic advertising device shall be legible from the main traveled way and shall not be larger than twenty (20) square feet. The owner’s name shall be shown without other owner information and shall not be considered a message.

(11) The message on an electronic advertising device shall be:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message to another in less than two (2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(12) An electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(13) Spacing between off-premise advertising devices per visible direction of travel on interstates, parkways, national highway systems, or federal-aid primary highways shall be at least:

(a) 2,500 feet between off-premise electronic advertising devices; or

(b) 500 feet between an off-premise electronic advertising device and an off-premise static advertising device.

Section 2. Exchange of Billboards for Permit. (1) An exchange of six (6)[four (4)] existing off-premise advertising devices shall be required for one (1) new off-premise electronic advertising device located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) An exchange of five (5)[three (3)] existing off-premise advertising devices shall be required for the conversion of an existing local static advertising device in an urban area or an
urbanized protected area to an off-premise electronic advertising device. 
(3) An off-premise advertising device to be exchanged shall be:
(a) Situated in an unpermittable location in a protected area;
(b) Visible from a scenic highway;
(c) Currently nonconforming as established in Section 5 of this administrative regulation or pursuant to local regulations; or
(d) Illegal.
(4) An advertising device proposed for an exchange for a permit shall be no less than fifty (50) square feet per facing.
(5) An advertising device proposed for exchange that meets the requirements of subsections (3) and (4) of this section shall be approved by the department prior to exchange.
(6) The owner of an exchanged advertising device shall receive credit for each advertising device removed after the effective date of this administrative regulation.
(7) If an advertising device is removed by an owner in order to obtain a permit under this administrative regulation, but the permit is denied by the department, the department shall credit the owner for the removed device pending the outcome of the appeal or until a permit is filed for another advertising device.
(8) If the permittee voluntarily removes an advertising device and receives credit toward a permit for an electronic advertising device, the permittee waives any right or claim to any additional compensation from the department for that device.

Section 3. Off-premise Electronic Advertising Devices on Interstates and Parkways. (1) Electronic advertising devices shall only be erected or maintained in a protected area of an interstate or parkway that:
(a) Is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or
(b) Was zoned commercial or industrial and included a commercial industrial land use on September 21, 1959.
(2) An electronic advertising device shall be no closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

Section 4. Off-Premise Electronic Advertising Devices on National Highway System and Federal-Aid Primary Highways. An electronic advertising device visible from a national highway system or federal-aid primary highway shall be erected and maintained in:
(1) A commercial or industrial zone; or
(2) An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

Section 5. Nonconforming Electronic Advertising Devices. (1) A nonconforming electronic advertising device in a protected area shall not require a permit and shall continue to exist if the device:
(a) Has not been abandoned or discontinued;
(b) Has been subjected to only routine maintenance as established in subsection (7) of this section;
(c) Is in compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at permitting; and
(d) Remains substantially the same including the structure as it was on the effective date of the state law or administrative regulation that made the device nonconforming.
(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.
(3) An incomplete or inaccurate submission shall not be considered an update submittal.
(4) The update submittal for a nonconforming electronic advertising device shall be submitted electronically to the department pursuant to the following table:

<table>
<thead>
<tr>
<th>Dept. of Highways’ District #</th>
<th>Submittal Year</th>
<th>Submittal Period*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 &amp; 7</td>
<td>Odd</td>
<td>January 1- April 30th</td>
</tr>
<tr>
<td>2 &amp; 4</td>
<td>Even</td>
<td>January 1- April 30th</td>
</tr>
<tr>
<td>3 &amp; 9</td>
<td>Odd</td>
<td>May 1st- August 31st</td>
</tr>
<tr>
<td>6 &amp; 8</td>
<td>Even</td>
<td>May 1st- August 31st</td>
</tr>
<tr>
<td>5 &amp; 11</td>
<td>Odd</td>
<td>September 1st – December 31st</td>
</tr>
<tr>
<td>10 &amp; 12</td>
<td>Even</td>
<td>September 1st – December 31st</td>
</tr>
</tbody>
</table>

* A submittal shall be received during the submittal period to be considered.
(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of $250 per permit pursuant to KRS 177.990(2).
(6) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.
(7) An owner may conduct routine maintenance of a nonconforming electronic advertising device. [The following shall be considered] Routine maintenance shall include:
(a) In kind replacement of material components with a like material component;
(b) Painting of supports and frames;
(c) Changing existing nonstructural light fixtures for energy efficiency;
(d) Replacement of nuts, bolts, or nails;
(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and
(f) Rebuilding a destroyed advertising device.
(8) [The following shall be considered] Non routine maintenance shall include:
(a) Enlargement of the device;
(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
(c) The addition of bracing, guy wires, or other reinforcement;
(d) A change in the location of the structure; or
(e) A change in the direction of the face.
(9) Non routine maintenance on a nonconforming electronic advertising device shall constitute a violation of this administrative regulation and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 6. On-Premise Advertising Devices. (1) An on-premise advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.
(2) An on-premise electronic advertising device shall be erected on the property where the business is located and:
(a) [On the property where the business is located] Inside the activity boundary line; or
(b) On the property where the business is located and No farther than 400 feet from the activity boundary line.
(3) An on-premise advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit on the property shall be considered within the activity boundary line.
(4) An on-premise electronic advertising device that complies with this administrative regulation shall only be erected:
(a)1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or
2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and
(b) If the device complies with this administrative regulation,
and county or city zoning ordinances pursuant to KRS 177.860(4).
(5) If further than fifty (50) feet outside of the activity boundary line, an on-premise electronic advertising device shall not exceed:
(a) Twenty (20) feet in length, width, or height; and
(b) 150 square feet in area, including border and trim and excluding supports.
(6) More than one (1) on-premise electronic advertising device shall not be located at a distance greater than fifty (50) feet outside of the activity boundary line.
(7) If taking measurements for the placement of an on-premise electronic advertising device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.
(8) An on-premise electronic advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside of the activity boundary line of the business being advertised.
(9) If taking measurements for the placement of an on-premise electronic advertising device for a shopping center, mall, or other combined business location shall be considered within the activity boundary line.
(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:
(a) Identify a business or businesses conducted at the location; or
(b) Include a display area used to advertise on-premise activities.
(11) An on-premise electronic advertising device erected for a shopping center, mall, or other combined business location may either:
(a) Identify each of the individual businesses conducted at the location; or
(b) Include a display area used to advertise on-premise activities.
(12) An on-premise advertising device shall not:
(a) Move, or have moving or animated parts;
(b) Be erected or maintained on a tree; or
(c) Be erected upon or overhanging the right-of-way.
(13) An on-premise electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.
(14) An on-premise electronic advertising device shall not affect the spacing requirements of a device as established in KRS 177.863(2)(d).
(15) Extensions of a facing up to fifteen (15) percent shall be allowed on an electronic advertising device:
(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the advertising device as established in KRS 177.863(3)(a); or
(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the advertising device in subsection (4)(b) of this section.
(16) An on-premise electronic advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 7. Scenic Highways and Byways. (1) After designation of a scenic highway by the Transportation Cabinet, additional off-premise electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.
(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for an electronic advertising device located on a scenic byway as an electronic advertising device located on a scenic highway.
(3) Only routine maintenance shall be performed on an off-premise electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to off-premise electronic advertising devices on an interstate, parkway, national highway system, or federal-aid primary highway.
(2) With the exception of nonconforming electronic advertising devices, a permit shall be required from the department for a device located in a protected area.
(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.
(4) An application for an electronic advertising device permit shall be made on a completed Application for Advertising Device, TC Form 99-31.
(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.
(6) A permittee shall submit biennial renewals on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.
(7)(a) If submitting a biennial renewal, the permittee shall certify that the electronic advertising device meets the permit requirements of this administrative regulation.

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<thead>
<tr>
<th>Dept. of Highways’ District #</th>
<th>Submittal Year</th>
<th>Submittal Period*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 &amp; 7 Odd</td>
<td>January 1- April 30th</td>
<td></td>
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<tr>
<td>2 &amp; 4 Even</td>
<td>January 1- April 30th</td>
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<tr>
<td>3 &amp; 9 Odd</td>
<td>May 1st - August 31st</td>
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<tr>
<td>6 &amp; 8 Even</td>
<td>May 1st - August 31st</td>
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<td>5 &amp; 11 Odd</td>
<td>September 1st – December 31st</td>
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<tr>
<td>10 &amp; 12 Even</td>
<td>September 1st – December 31st</td>
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</tbody>
</table>

*A submittal shall be received during the submittal period to be considered.

(8) A renewal submittal for an electronic advertising device shall be submitted electronically to the department pursuant to the following schedule:
(9) Failure to submit a renewal within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of $250 per permit pursuant to KRS 177.990(2).
(10) An electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for an electronic advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.
(11) An application amendment for substantial change to an approved electronic advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:
(a) Enlargement of the device;
(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;
(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
(d) A change or upgrade in the technology related to the electronic advertising device;
(e) The addition of bracing, guy wires, or other reinforcement;
(f) A change in the location of the structure; or
(g) A change in the direction of the face.
(12) The permit for an off-premise electronic advertising device that has not been constructed prior to the renewal date shall be cancelled.
Section 9. Notice of Violations; Appeals. (1) The department shall notify the owner of an electronic advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 138. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 10 of this administrative regulation.

Section 10. Penalties. (1) The owner of an electronic advertising device who violates a provision of this administrative regulation shall be assessed a penalty of $500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

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

(a) "Application for Advertising Device", TC Form 99-31, May 2013;
(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;
(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013;
(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971; and

NANCY ALBRIGHT, Deputy State Highway Engineer
MICHAEL W. HANCOCK, P.E., Secretary
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: July 13, 2015
FILED WITH LRC: July 15, 2015 at 8 a.m.
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.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 8, 2015)

VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

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, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingstone, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trigg, Trimble, Union, and Webster Counties shall renew in the month of January.


Section 4.[2] 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.[2] 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[4][a group license] that covers multiple premises shall renew its licenses using the license expiration date based on the county of each premise[4][at the same time].

Section 10. A licensee that holds multiple licenses for more than two (2) premises [may][shall be permitted to] renew the licenses by batch at the same time. A licensee who wants to renew all premises by batch shall notify the department in writing. Upon written notification[8][3]. 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.[10] A licensee that elects to do batch renewal may return to separate monthly renewal by sending a letter to the department requesting the change[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 required by 27 C.F.R. Part 19, 24, or 25 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. These forms 
are available in accordance with 27 C.F.R. 19.15, 24.20, and 25.3. Microbreweries shall submit copies of their federal Brewer’s Report of Operations, TTB F 5139.9, 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 by 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: August 13, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 8, 2015)

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

RELATES TO: KRS 241.060(1)
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

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

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

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

(1) Microbrewer’s Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue; or
(2) Product Registration Online to be completed electronically at:
(a) https://www.productregistrationonline.com/GetStarted/Ky##selectPermit;
(b) https://www.productregistrationonline.com/distributor/login;
or
(c) https://www.productregistrationonline.com/producer/login.

Section 3. Additional Forms. An applicable licensee shall provide and submit the following additional forms:
(1) Dormancy Request for Quota Retail Licenses;
(2) Amendment to Application Authorization Form;
(3) ABC Retailer Sampling Request;
(4) Request for Minors on Premises;
(5) Affidavit of Ownership;
(6) Affidavit of Non-Transfer;
(7) Notice of Surrender of License(s);
(8) Request to Participate in the Master File Licensing Process;
(9) Application Request for Approval of Partial Transfer of Ownership to my Original License Application; or
(10) Remittance Form.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application”, September 2014;
(b) “Special Temporary License Application”, September 2014;
(c) “Supplemental License Application”, July 2014;
(d) “Microbrewer’s Retail Gross Receipts Report to Distributor”, June 2015(2013);
(e) “Product Registration Online”, September 2014;
(f) “Distiller’s License: Change of License Application”, July 2014;
(g) “Dormancy Request for Quota Retail Licenses”, June 2013;
(h) “Amendment to Application Authorization Form”, July 2014;
(i) “ABC Retailer Sampling Request”, June 26, 2012;
(j) “Request for Minors on Premises”, June 2013;
(k) “Affidavit of Ownership”, June 2013;
(l) “Affidavit of Non-Transfer”, June 2013;
(m) “Notice of Surrender of License(s)”, June 2013;
(n) “Request to Participate in the Master File Licensing Process”, June 2013;
(o) “Application Request for Approval of Partial Transfer of Ownership to my Original License Application”, June 2013; and

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

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: July 10, 2015
FILED WITH LRC: July 10, 2015 at 4 p.m.
CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, September 8, 2015)

804 KAR 9:040. Quota retail package licenses.

RELATES TO: KRS 241.060, 241.065,[241.075], 242.125, 243.030
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed
Section 1. Establishment of general city quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail package licenses issued by the department in a city in the commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election [held after January 1, 2013] shall be a number equal to one (1) for every 2,300 persons resident in the city.

(2) The minimum number of quota retail package licenses issued by the department in a city shall be two (2) licenses.

(3) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) or more years after the certification of a wet election pursuant to KRS 242.125 by a city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail package licenses for the city.

(2) Before satisfying this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city’s intent to request additional city quota licenses from the board.

(3) A city’s request to the board for a specific increased quota shall include:

(a) A certified copy of a city’s governing body government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

Section 3. Criteria for Consideration. (1) The board shall consider the following information in its determination of a city’s request for an increased quota made under Section 2(3) of this administrative regulation:

(a) Population served by the city;

(b) Total retail sales of the city for the most recent past fiscal year;

(c) Retail sales per capita for the most recent past fiscal year;

(d) Total alcohol sales in the city for the most recent fiscal year;

(e) Tourist destinations in the area, if applicable; and

(f) Other economic and commercial data offered to show the city’s capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) quota retail package licenses.

(2) Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) quota retail package licenses.

(3) Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) quota retail package licenses.

(4) Dawson Spring, which repealed prohibition on February 5, 2008, shall have a quota of two (2) quota retail package licenses.

(5) Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) quota retail package licenses.

(6) Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) quota retail package licenses.

(7) Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) quota retail package licenses.

(8) Earlington, which repealed prohibition on March 29, 2011, shall have a quota of two (2) quota retail package licenses.

(9) Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) quota retail package licenses.

(10) Elizabethown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) quota retail package licenses.

(11) Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) quota retail package licenses.

(12) Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(13) Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(14) Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(15) Corbin, which repealed prohibition on February 14, 2012, shall have a quota of three (3) quota retail package licenses.

(16) Somerset, which repealed prohibition on June 26, 2012, shall have a quota of five (5) quota retail package licenses.

(17) Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) quota retail package licenses.

(18) Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) quota retail package licenses.

(19) Franklin, which repealed prohibition on July 17, 2012, shall have a quota of three (3) quota retail package licenses.

(20) LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) quota retail package licenses.

(21) Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) quota retail package licenses.

(22) Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) quota retail package licenses.

(23) Bowling Green, which requested a quota increase on May 18, 2015, shall have a quota of forty-one (41) quota retail package licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.

(2) If a city’s population has increased and the city no longer has one (1) quota retail package license for every 2,300 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city’s quota for additional licenses.

(3) If a quota retail package license vacancy is created under Section 1 or 2 of this administrative regulation or subsection
Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) or more years after the certification of a wet election pursuant to KRS 242.125[by a first, second, or third class city,] or pursuant to KRS 242.127 and 242.125[for a fourth class city], the city may file a request to the board seeking a specific city quota to increase the number of quota retail drink licenses for the city.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city’s intent to request additional city quota licenses from the board.

(3) A city’s request to the board for a specific increased quota shall include:

(a) A certified copy of a city’s governing body government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail drink licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section shall not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the procedures of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

Section 3. Criteria for Consideration. (1) The board shall consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

(a) Population served by the city;

(b) Total retail sales of the city for the most recent past fiscal year;

(c) Retail sales per capita for the most recent past fiscal year;

(d) Total alcohol sales in the city for the most recent past fiscal year;

(e) Tourist destinations in the area, if applicable; and

(f) Other economic and commercial data offered to show the city’s capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Danville, which repealed prohibition on March 2, 2010, shall have six (6) quota retail drink licenses.

(2) Radcliff, which repealed prohibition on October 4, 2011, shall have eight (8) quota retail drink licenses.

(3) Somerset, which repealed prohibition on June 26, 2012, shall have five (5) quota retail drink licenses.

(4) Murray, which repealed prohibition on July 17, 2012, shall
have seven (7) quota retail drink licenses.
(5) Bowling Green, which requested a quota increase on May 18, 2015, shall have forty-one (41) quota retail drink licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.
(2) If a city’s population has increased and the city no longer has one (1) quota retail drink license for every 2,500 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city’s quota to maintain the 1:2,500 ratio.
(3) If a quota retail drink license vacancy is created under Section 1 or 2 of this administrative regulation or subsection (2) or (6) of this administrative regulation or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.
(4) The Department of Alcoholic Beverage Control shall accept applications for a quota retail drink license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3) of this section is published.
(5) A licensee that holds a quota retail drink license shall assume the business risk that the number of quota licenses might be increased.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail drink license issued in a wet city situated in a dry county.
(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail drink license for every 2,500 persons resident in the city, the number of licenses shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation.

FREDDICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: July 2, 2015 at 4 p.m.
CONTACT PERSON: Melissa McCueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Technical Amendment, August 20, 2015, and As Amended at IJC on Natural Resources and Environment, September 3, 2015)

805 KAR 1:100. Commission’s rules of procedure, spacing of deep well drilling, wildcat wells, and pooling of interests.


STATUTORY AUTHORITY: KRS [12A.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 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 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).
(4) (d) “Deep well” is defined by KRS 353.510(16).
(5) (e) “Department” is defined by KRS 353.510(1).
(6) “Director” is defined by KRS 353.510(3).
(7) “Drilling unit” is defined by KRS 353.510(19).
(8) (fi) “Field” is defined by KRS 353.510(10).
(9) (g) “Gas” is defined by KRS 353.510(8).
(10) “Horizontal well” is defined by KRS 353.510(25).
(11) “Just and equitable share of production” is defined by KRS 353.510(11).
(12) “Oil” is defined by KRS 353.510(7).
(13) (l) “Operator” is defined by KRS 353.510(17).
(14) (l) “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.
(15) “Person” means KRS 353.510(5).
(17) “Presidential royalty” is defined by KRS 353.510(27).
(18) “Royalty owner” is defined by KRS 353.510(18).
(19) “Vertical well” is defined by KRS 353.510(26).
(20) “Well” is defined by KRS 353.510(14).
(21) “Wildcat well” means any deep vertical or horizontal well that is drilled with the intent of discovering or producing hydrocarbons from a formation or formations not previously productive of oil or gas within 10,000 feet of its location or drilled with such 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) “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) “Commission” means the Commissioner of the Department of Mines and Minerals as defined in KRS 353.010;
(3) “Director” means the Director of Oil and Gas Conservation as provided in KRS 353.510;
(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 practices and which are not the result of condensation of gas after it leaves the underground reservoir;
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(8) "Gas" means all natural gas, including casingshead 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 tract;

(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 water, gas or other fluid is being injected;

(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 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) A public hearing pursuant to KRS Chapter 13B shall be conducted by the commission;

(2) as a result of a reported violation of a requirement of this administrative regulation;

(3) 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, 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 of any interested party. 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] 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. 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) 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, 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) 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 and for which special field rules are proposed, the commission shall give the 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 the names and addresses of all persons, firms, or corporations who make request in writing to be included on the general mailing list. Each person, firm, or corporation shall be placed on the general mailing list if the request is in writing to be included thereon. Each person included on the mailing list shall be mailed 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 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 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 field.

(c) The failure to mail a copy of a notice to a person on a mailing list established by this section shall not invalidate the validity of any hearing held pursuant to this section unless the person omitted from the mailing list is reasonably known to have an interest in the subject matter of the hearing.

(9) Each notice of a hearing shall state the:

(a) Time and place of the hearing;

(b)(i) The name of the party requesting the hearing;

(c) Nature of the hearing;

(d) The name of the party requesting the hearing;

(e)(i) The name of the person, firm, or corporation to whom the notice is to be mailed;

(f)(i) The Docket number.

(10) A 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.

(11) After notice of a hearing is 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 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 upon notice of the hearing, the expiration of the rule, administrative regulation, or order.

(14) All interested persons or parties shall have the right to be heard at a hearing 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.

(15) In any proceeding before the commission subjects may be required to file affidavits of ownership of oil, gas, or other minerals or rights thereto that are to be unitized 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.

(16) Each hearing shall be opened with the reading of the notice of the hearing. The request for hearing, the notice of the hearing, and proof of the due publication of the notice of the hearing shall be made a part of the record of the hearing.

(17) Each witness shall be sworn 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 (its) attorney on behalf of the party.

(18) In all contested matters or in contested matters in which 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 and to require the affiant to appear in person if more information is necessary.

(19) An objection to the competency, 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.

(20) When so interposed, such objections shall be acted upon by the chairperson of the hearing or by any member of the commission.

(21) Each party presenting an exhibit 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.

(22) The commission shall order any and all such affidavits, motions for continuance, and other pertinent documents material to the matters lawfully before the commission.

(23) Each party to the hearing 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.

(24) 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 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 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 field.

(25) Each notice of a hearing shall state the:

(a) Time and place of the hearing:

(b)(i) The name of the party requesting the hearing;

(c) Nature of the hearing:

(d) The name of the party requesting the hearing;

(e)(i) The name of the person, firm, or corporation to whom the notice is to be mailed;

(f)(i) The Docket number.

(26) A 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.

(27) Each notice of a hearing shall be mailed to the address given on the mailing 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 shall be mailed a copy of all notices and orders issued by the commission pertaining to that field.

(28) Each notice of a hearing shall state the:

(a) Time and place of the hearing:

(b)(i) The name of the party requesting the hearing;

(c) Nature of the hearing:

(d) The name of the party requesting the hearing;

(e)(i) The name of the person, firm, or corporation to whom the notice is to be mailed;

(f)(i) The Docket number.

(29) A 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.

(30) Each notice of a hearing shall state the:

(a) Time and place of the hearing:

(b)(i) The name of the party requesting the hearing;

(c) Nature of the hearing:

(d) The name of the party requesting the hearing;

(e)(i) The name of the person, firm, or corporation to whom the notice is to be mailed;

(f)(i) The Docket number.

(31) A 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.

(32) Each notice of a hearing shall state the:

(a) Time and place of the hearing:

(b)(i) The name of the party requesting the hearing;

(c) Nature of the hearing:

(d) The name of the party requesting the hearing;

(e)(i) The name of the person, firm, or corporation to whom the notice is to be mailed;

(f)(i) The Docket number.

(33) A 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.
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).

(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 [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, the operator of the commission shall be informed in writing of the [his] action.

(d) If an operator files an Application for Permit, ED-I, 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 determines, 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) or 5(2) of this administrative regulation. A location that varies [locations vary] 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 commercially feasible. The determination of the special action is necessary, the director shall call a hearing of the commission.

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-I, 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 within 1,072 feet 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 gas 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] 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 and

(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.

(c) Unless otherwise prescribed in paragraph (a) of this subsection, [a] and

(d) [no vertical deep gas 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.

(3) Except as established [provided] in subsections (4) and (5) of this section, [a] a [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 and

(b) [no deep oil well drilled to a depth] Of 7,000 feet or more shall not be drilled within 536 feet of the boundary of the proposed unit.

(4) Pursuant to paragraph (b) of this subsection, upon receiving evidence showing a necessity [thereof], 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. Oil well at a depth [A vertical deep oil well at a depth less than 7,000 feet shall not be located closer than 438 feet to the boundary of the proposed unit.]

2. Oil well at a depth [A vertical deep oil well at a depth of 7,000 feet or more shall not be located closer than 625 feet to the boundary of the proposed unit.]

3. Gas well at a depth [A vertical deep gas well at a depth of less than 7,000 feet shall not be located closer than 875 feet to the boundary of the proposed unit.]

4. Gas well at a depth [A vertical deep gas well at a depth of 7,000 feet or more shall not be located closer than 1,250 feet to the boundary of the proposed unit.

(b) The director shall not grant a permit pursuant to [under] the conditions of paragraphs (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 is drilled in accordance with paragraph (a) of this subsection, the director [may hear] a topographical condition, it [shall be submitted to] the director [shall inform] the other members of the commission of his or her action.

4. A proposed unit for a pool shall be delineated so that the plat is filed for a wildcat well or any subsequent wells, no permits shall 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.

(b) If 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) 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 formed by order of the commission upon which a permit has been granted and a topographical condition, it [shall be submitted to] the director [shall inform] the other members of the commission of his or her action in writing.

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.

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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 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 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 in the hole or because of other mechanical difficulties, the operator[the operator] 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.

c. If the new 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 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[ordinance] 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[if 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.

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.

1. [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.

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.

3. (b) In the event a well is to be drilled at a distance from a unit or units established as a result of the hearing, 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 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.

1. [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.

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.

4. (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. (b) In the event a well is to be drilled at a distance from a unit or units established as a result of the hearing, 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 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.

1. [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.

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.

Section 5. Horizontal Unitization and Pooling for Deep Well Reservoirs. (1) In accordance[Under] the procedures established[contained] in this section, the commission shall[is authorized to] utilize 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 those horizontal 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[.]

(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[.] which shall include the:

1. Surface location of each well;

2. [The] Directional path of the lateral portion of the wellbore[.]

(d) The plan of development shall be fair, reasonable, [acceptable], 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.

[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[.] 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 the [such] request shall be presented to the commission at the hearing.

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. (a) No Additional permits for a deep vertical well shall[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 well[s], 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.
(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) Geologic 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(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 [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. [j] Will prevent waste;

c. [j] Will protect correlative rights; and

d. [j] 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.

(c) 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.

(f) The order of the commission creating the unit shall:

(1) 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;

(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 well(s) 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 wells] 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] 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 information 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.

(1) 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) [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 oil and gas 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[shall] shall, at the operator’s request[apply for] a hearing to obtain an exception location [Section 7.2. 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 notice 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[ed] geophysical data; or
3. 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(3)).

(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 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(2015 Ky. Acts ch. 21, sec. 6(3)).

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.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(As Amended at ARRS, September 8, 2015)

808 KAR 10:500. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.

RELATES TO: KRS 292.330, 292.411, 292.412
STATUTORY AUTHORITY: KRS 292.500(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS 292.412(2) requires the commissioner to prescribe the filing procedure and form to be used by registered broker-dealers operating an Internet Web site pursuant to KRS 292.411(1)(y), KRS 292.412(3), (5), (6), (7), and (8) require[requires] the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators. This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 292.310(4).

(2) "Completion of an offering" means the occurrence of one (1) of the following:

(a) The date upon which the offering deadline expires;
(b) The date upon which the transaction becomes void pursuant to KRS 292.411(1)(i); or
(c) If the offering is closed prior to the offering deadline pursuant to KRS 292.411(k), the date of early closing.

(3) "Internet Web site operator" means a person registered as an Internet Web site operator pursuant to KRS 292.412.

Section 2. Issuer Notice Filings. An issuer making a notice filing pursuant to KRS 292.411(1)(f) shall complete and submit the following:

(1) Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form with all required attachments;
(2) Form CF 2, Final Report of Sales Form no later than thirty (30) days after the completion of an offering conducted pursuant to KRS 292.411; and
(3) A filing fee of $500.

Section 3. Registration of Internet Web site operators. (1) A person applying for registration as an Internet Web site operator shall complete and submit the following:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments;
(b) Form CF 4, Internet Web Site Operator Surety Bond Form;
and
Section 4. Broker-dealer Notice Filings. (1) Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form shall be completed by a broker-dealer making a notice filing pursuant to KRS 292.412(2).

(2) A notice filing shall be filed before the broker-dealer operates an Internet Web site pursuant to KRS 292.411(1)(f).

(3) Except as provided in subsection (4) of this section, a notice filing made pursuant to this section shall be effective until December 31 of the year in which the filing is made.

(4) A notice filing made between December 1 and December 31 of the year in which a previous notice filing expires shall be effective for the subsequent calendar year.

Section 5. Recordkeeping requirements. (1) An issuer shall accurately make and keep the following books and records relating to any offer or sale made pursuant to KRS 292.411:

(a) All forms and documents that are required by KRS 292.411 or this administrative regulation to be filed with the commissioner;

(b) Evidence of residency from each purchaser in any offering made by the issuer as required by KRS 292.411(1)(a);

(c) Evidence of accredited investor status for each purchaser making an investment exceeding $10,000 as required by KRS 292.411(1)(a) and (o);

(d) Evidence reflecting all offers made by the issuer;

(e) Evidence reflecting all sales made by the issuer;

(f) Manually or electronically signed copies of all purchaser certifications as required by KRS 292.411(1)(n);

(g) All limited notices distributed in accordance with KRS 292.411(1)(a) and (o);

(h) All notices of cancellation of commitment to invest pursuant to KRS 292.411(1)(j):

(i) All notices of closing of an offering prior to the offering deadline delivered pursuant to KRS 292.411(1)(k);

(j) Quarterly reports made pursuant to KRS 292.411(1)(l); and

(k) All other communications with purchasers in the offering.

(2) An Internet Web site operator shall accurately make and keep the following books and records:

(a) Records of fees received pursuant to KRS 292.412(4)(a);

(b) All agreements with issuers offering securities through the Internet Web site operator's Web site;

(c) All information provided to the Internet Web site operator by an issuer to establish that the issuer is organized under the laws of Kentucky and authorized to do business in Kentucky as required by KRS 292.411(1)(r)1. and (o);

(d) Evidence reflecting the limitation of Web site access as required by KRS 292.411(1)(r)2.;

(e) All correspondence or other communications with issuers, prospective purchasers, or purchasers;

(f) All information made available through the Internet Web site relating to an offering; and

(g) Any other information provided by or through the Internet Web site operator to issuers, prospective purchasers, or purchasers.

Section 6. Kentucky intrastate crowdfunding examination fees. The fee for a routine examination of an Internet Web site operator shall be fifty (50) dollars per working hour. A fee shall not be charged for examination work by an examiner-trainee.

Section 7. Incorporation by reference. (1) The following material is incorporated by reference:

(a) “Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form”, July 2015;

(b) “Form CF 2, Final Report of Sales Form”, July 2015;

(c) “Form CF 3, Internet Web Site Operator Registration Form”, July 2015;

(d) “Form CF 4, Internet Web Site Operator Surety Bond Form”, July 2015; and

(e) “Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form”, July 2015.

(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 4:30 p.m. This material may also be obtained at www.kfi.ky.gov.
Section 2. Timing of Awards; Eligibility. (1) Disbursements from the KBIF [Kentucky Thoroughbred Breeders’ Incentive Fund] shall be made [as soon as is practicable] after December 31 [the end of each full racing year based on a calendar year], but not later than March 31, for awards earned for the preceding calendar year [of the calendar year following the last date the application may be filed under Section 2(3)(b) of this administrative regulation].

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders’ Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administration regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be [fifty thousand dollars ($50,000)].

(3)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall not be eligible for the Kentucky claiming component.

(c) An incentive of $200,000 shall be distributed to the top twenty (20) qualified Kentucky claiming horses with the most wins, as follows:

1. $20,000 to the horse with the most wins;
2. $17,500 to the horse with the second most wins;
3. $15,000 to the horse with the third most wins;
4. $12,500 to the horse with the fourth most wins;
5. $12,000 to the horse with the fifth most wins;
6. $11,500 to the horse with the sixth most wins;
7. $11,000 to the horse with the seventh most wins;
8. $10,500 to the horse with the eighth most wins;
9. $10,000 to the horse with the ninth most wins;
10. $9,500 to the horse with the tenth most wins;
11. $9,000 to the horse with the eleventh most wins;
12. $8,500 to the horse with the twelfth most wins;
13. $8,000 to the horse with the thirteenth most wins;
14. $7,500 to the horse with the fourteenth most wins;
15. $7,000 to the horse with the fifteenth most wins;
16. $6,500 to the horse with the sixteenth most wins;
17. $6,000 to the horse with the seventeenth most wins;
18. $6,000 to the horse with the eighteenth most wins;
19. $6,000 to the horse with the nineteenth most wins;
20. $6,000 to the horse with the twentieth most wins.

(2) or more horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between or among them [This shall apply in dividing all incentives whatever the number of horses which finish with the same number of wins and the same total earnings.]

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten percent of the qualified winner’s earnings except it shall not exceed thirty thousand dollars ($30,000).

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten percent of the qualified winner’s earnings except it shall not exceed [four thousand dollars ($4,000)].

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten percent of the qualified winner’s earnings except it shall not exceed [four thousand dollars ($4,000)].

(6)(a) An incentive shall be awarded to the qualified breeder of a race for which entries close at a time set by the racing secretary.
the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner’s earnings except it shall not exceed $4,000(four thousand dollars ($4,000)).

(7)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:
1. Grade I stakes race held in the United States;
2. Group 1 race held in Canada, England, France, and Ireland; and
3. Group I race held on Dubai World Cup day, Japan Cup day, and Hong Kong International day.

(b) The incentive shall be $7,500(seven thousand, five hundred dollars ($7,500)).

(8)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:
1. Grade II and Grade III stakes race held in the United States; and
2. Group 2 and Group 3 race held in Canada, England, France, and Ireland.

The incentive shall be $5,000(five thousand dollars ($5,000)).

(9) An incentive shall not be awarded to the winner of any Breeders’ Cup World Championship race.

Section 4. Registration of Foals. (1)(a) For a horse foaled on or before December 31, 2006[prior to 2007] and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file a Kentucky Thoroughbred Breeders’ Incentive Fund Application for Award with the commission[as “Grandfather Application for the Kentucky Thoroughbred Breeders’ Incentive Fund (for a horse born in 2006 and prior years)].

(b) The Kentucky Thoroughbred Breeders’ Incentive Fund Application for Award[applicat[on]] shall be filed no later than the December 31 of the year following the year in which the horse has raced in a year that would qualify the horse[as][for] an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars[may be paid with the application or if] shall be deducted from the award amount.

(d) The filing fee shall be assessed one (1) time per horse.

(2) For a horse foaled on or after January 1, 2007, the intended breeder of record shall register the unborn foal with the commission on or prior to August 15 of the cover year[before December 31 of the cover year] by filing the Kentucky Thoroughbred Breeders’ Incentive Fund Application for Mare Registration[“Application for the Kentucky Thoroughbred Breeders’ Incentive Fund (for the breeding season beginning in 2007)”] and paying a filing fee of sixty (60) dollars, except as provided in subsection (5) of this section.

(b) The application shall be recognized and designated as the sole official registrar of the KBIF[Kentucky Thoroughbred Breeders’ Incentive Fund] for the purposes of registering Kentucky thoroughbred foals in accordance with this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission for determining the following information:
1. The identity of the qualified breeder;
2. The claiming wins and earnings for each race pursuant to which an award shall be granted under this administrative regulation;
3. The qualified winners’ earnings for each race pursuant to which an award shall be granted under this administrative regulation;
4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;
5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(2) of this administrative regulation;
6. The registration number or reciprocal identification number of the KBIF[registered][KBIF registered] horse;
7. The name of the KBIF[registered][KBIF registered] horse;

8. Other information for purposes of administering the KBIF.

(4) If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall promptly file an amended form with the commission to correct the information within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change.

(5)(a) A late[hardship] filing may be made if the intended breeder of record can prove[that there was good cause for the application to not have been filed on a timely basis as required under subsection (2) of this section,] and that the foal otherwise met the eligibility requirements to be a KBIF registered[KBIF registered] horse. The filing shall be made on the form Kentucky Thoroughbred Breeders’ Incentive Fund Application for Late Mare Registration[“Late Filing of Application for the Kentucky Breeders’ Incentive Fund”].

(b) The amount of the filing fee shall be as follows:
1. For a filing made after August 15 of the cover year[breeding season] and on or prior to December 31 of the cover year, the filing fee shall be $150;
2. For a filing made between January 1 and December 31 of the cover year and on or prior to December 31 of the weanling year, the filing fee shall be $750; and
3. For a filing made between January 1 and December 31 of the weanling year, the filing fee shall be $1,500.[No other late filing shall be permitted.]

(b) The filing shall be made on the form Kentucky Thoroughbred Breeders’ Incentive Fund Application for Special Filing of Mare Registration.

(c) The amount of the filing shall be as follows:
1. For a filing made between January 1 and December 31 of the cover year, the filing fee shall be $300;
2. For a filing made between January 1 and December 31 of the weanling year, the filing fee shall be $1,500; and
3. For a filing made between January 1 and December 31 of the weanling year, the filing fee shall be $3,000.

(7) If ownership of a mare is transferred[to], a Kentucky Thoroughbred Breeders’ Incentive Fund Mare Transfer Form[“Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders’ Incentive Fund”] shall be filed with the commission.

(8)(24) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The commission may inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission may also request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be considered to not have been the intended breeder[was not the intended breeder] or the circumstances causing the information to change.

(4) All of the applicable terms, conditions, and requirements of this administrative regulation.

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(4) In order for the thoroughbred dam[mare] to be a qualified mare as defined in Section 1(20)[4198] of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the following exceptions is met:

(a) Medical procedure.
1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;
2. The owner or the lessee of the mare[when the mare leaves Kentucky] files a Kentucky Thoroughbred Breeders’ Incentive Fund Application to Move Mare Outside of Kentucky no later than fourteen (14) days after the mare leaves Kentucky[an Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders’ Incentive Fund] and provides information relating to the procedure as requested by the commission[within fourteen (14) days after the mare leaves Kentucky];
3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (a) of this subsection;[and]
4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky;
5. The mare is in Kentucky for foaling; and
6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling[or]

(b) Training.
1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;
2. The owner or the lessee of the mare[when the mare leaves Kentucky] files a Kentucky Thoroughbred Breeders’ Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky[an Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders’ Incentive Fund] and provides information relating to the training outside of Kentucky as requested by the commission[within fourteen (14) days after the mare leaves Kentucky];
3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (b) of this subsection;[and]
4. The mare is in Kentucky for foaling; and
5. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling; or

(c) Public auction.
1. The owner of the mare desires to enter her for sale at a public auction held outside of Kentucky;
2. The owner of the mare with the commission a Kentucky Thoroughbred Breeders’ Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;
3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (c) of this subsection;
4. The mare returns to Kentucky within fourteen (14) days after the conclusion of the auction;
5. The mare is in Kentucky for foaling; and
6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling[The mare returns to Kentucky within ten (10) days after the end of her racing career];

(5) The executive director shall notify the commission if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:
(a) The registration and records of the KBIF registered[KBIF- registered] horse; and
(b) Complying with the requirements of the Kentucky Thoroughbred Breeders’ Incentive Fund.

(7) The owner or lessee of the mare may withdraw the mare’s foal from the KBIF by filing a Kentucky Thoroughbred Breeders’ Incentive Fund Notice of Withdrawal of Foal[Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders’ Incentive Fund].

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the [cover year[breeding season]] relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available in the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award, until funding is adequate to fund all awards.

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least $5,000,000 when the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be decreased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each calendar[breeding season] year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the KBIF[commission].

(2)(a) After receipt of notification of an award, each potential recipient shall return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant’s United States taxpayer ID number or Social Security number.

(b) The application shall be on the form Kentucky Thoroughbred Breeders’ Incentive Fund Application for Award[Application for an Award from Kentucky Thoroughbred Breeders’ Incentive Fund].

(c) A breeder may appoint an authorized agent to complete the Kentucky Thoroughbred Breeders’ Incentive Fund Application for Award[Application for Award from Kentucky Thoroughbred Breeders’ Incentive Fund] by completing and filing with the commission a [Kentucky Thoroughbred Breeders’ Incentive Fund Authorized Agent Form].

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which
the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

Section 8. Disputes. (1) Any person claiming to be aggrieved by a decision of the commission in accordance with this administrative regulation shall file a complaint with the executive director or an authorized agent as provided in KRS Chapter 13B, the appeal shall be filed with the commission within ten (10) days of mailing of the decision and shall be conducted pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The commission may deny or revoke the qualified winner's earnings or registration of a foal or horse, and bar a person from participation in the fund for a period of one (1) to five (5) years based on the seriousness of the violation if the qualified winner, qualified breeder, or an applicant for qualified breeder status:

(a) Provides the commission with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the commission;

(b) Fails to furnish within thirty (30) days information the commission has requested relating to the registration of a foal or horse;

(c) Is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of a horse or horse; and

(d) Engages in conduct that is against the best interest of breeding or horse racing;

(2) If the commission denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the commission shall thereupon assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 10. The commission may establish an advisory committee to assist the commission in the administration of the KBIF. If established, the advisory committee shall consist of five (5) members appointed by the chairman of the commission by July 1 of each year. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. The advisory committee shall select a chairman from its membership annually.

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

(a) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration", KHRC Form 70-1, 6/15

(b) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRC Form 20-1, 4/06

(c) "Application for Special Filing of Mare Registration", KHRC Form 70-7, 6/15

(d) "Application for Late Mare Registration", KHRC Form 70-5, 4/06

(e) "Application to Move Mare Outside of Kentucky", KHRC Form 70-6, 4/06

(f) "Application to Move Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-5, 6/15

(g) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-6, 6/15

(h) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC Form 20-3, 4/06

(i) "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-9, 4/06

(j) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-7, 6/15

(k) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-8, 6/15

(l) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-9, 4/06

(m) "Kentucky Thoroughbred Breeders' Incentive Fund Application to Remove Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-10, 4/06

(n) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-11, 4/06

(o) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-12, 4/06

(p) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC Form 20-4, 4/06

(q) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC Form 20-5, 4/06

(r) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-13, 4/06

(s) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-14, 4/06

(t) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-15, 4/06

(u) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-16, 4/06

(v) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-17, 4/06

(w) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-18, 4/06

(x) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-19, 4/06

(y) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-20, 4/06

(z) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-21, 4/06

(1) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-22, 4/06

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at http://khrc.ky.gov.

ROBERT M. BECK, Jr., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: July 9, 2015
FILED WITH LRC: July 15, 2015 at noon
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, email katherine.paisley@ky.gov

1191
810 KAR 1:300. International medication protocol as a condition of a race.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 810 KAR Chapter 1 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in an International Medication Protocol [any such] race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post time for the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 810 KAR 1:018, 810 KAR 1:028, and 810 KAR 1:130.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administrative regulation shall be subject to the penalties provided in 810 KAR 1:028 for Class C drug violations in 810 KAR 1:028, Section 4(3).

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 810 KAR Chapter 1, the provisions in this administrative regulation shall supersede.

Section 5. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: May 6, 2015
FILED WITH LRC: May 11, 2015 at 4 p.m.
CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

811 KAR 1:300. International medication protocol as a condition of a race.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 811 KAR Chapter 1 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in an International Medication Protocol [any such] race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post time for the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 811 KAR 1:090, 811 KAR 1:095, and 811 KAR 1:260.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administrative regulation shall be subject to the penalties provided in 811 KAR 1:095 for Class C drug violations in 811 KAR 1:095, Section 5(3).

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 811 KAR Chapter 1, the provisions in this administrative regulation shall supersede.

Section 5. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: May 6, 2015
FILED WITH LRC: May 11, 2015 at 4 p.m.
CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, September 8, 2015)

811 KAR 2:300. International medication protocol as a condition of a race.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper act to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 811 KAR Chapter 2 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in an International Medication Protocol are subject to penalties provided in 811 KAR 2:100 for Class C drug violations in 811 KAR 2:100, Section 4(3).

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 811 KAR Chapter 2, the provisions in this administrative regulation shall supersede.

Section 5. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: May 6, 2015
FILED WITH LRC: May 11, 2015 at 4 p.m.
CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, September 8, 2015)

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
(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”.


(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 limited 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, 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.

(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 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:

<table>
<thead>
<tr>
<th>Size Inside Diameter Inches</th>
<th>Commercial Designation &quot;D&quot; or &quot;XL&quot;</th>
<th>Wall Thickness Inches</th>
<th>Weight Pounds Per Foot</th>
<th>Per Ounces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1/2</td>
<td>D</td>
<td>0.138</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>2</td>
<td>D</td>
<td>0.142</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>D</td>
<td>0.125</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>D</td>
<td>0.125</td>
<td>8</td>
<td>0</td>
</tr>
</tbody>
</table>

(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 warrant 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:

<table>
<thead>
<tr>
<th>Pipe Sizes Inches</th>
<th>Inside Diameter Inches</th>
<th>Length Inches</th>
<th>Minimum Weight Each</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2 1/4</td>
<td>2 1/2</td>
<td>1 lb. 0 oz.</td>
</tr>
<tr>
<td>3</td>
<td>3 1/4</td>
<td>4 1/2</td>
<td>1 lb. 12 oz.</td>
</tr>
<tr>
<td>4</td>
<td>4 1/4</td>
<td>4 1/2</td>
<td>2 lb. 8 oz.</td>
</tr>
</tbody>
</table>
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 to as adopted and incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.
(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
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PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Electrical Division
(As Amended at ARRS, September 8, 2015)
815 KAR 35:020. Electrical inspections.

RELATES TO: KRS 198B.050, 227.460, 227.480, 227.487, 227.491
STATUTORY AUTHORITY: KRS 198B.060, 227.480
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which[electrical inspections[by a Kentucky certified electrical inspector]] are required for electrical construction, installations, alterations, or repairs[within any electrical system]. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to [KRS Chapter 198B[the chapter]]. This administrative regulation establishes the requirements for[electrical] inspections of electrical construction, installations, alterations, and repairs.

Section 1. Compliance With Applicable Codes and Inspections. The department or a certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair, for compliance with NFPA 70, the National Electrical Code, [as adopted and incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.

Section 2. Mandatory Electrical Inspections. (1) Inspections shall be required for each electrical construction, installation, alteration, or repair that is not exempt from inspection pursuant to Section 4 of this administrative regulation.
(2) The department or a certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair[installations, and repairs]
(a) Upon request by the permit holder or property owner;
(b) Upon discovery or receipt of information indicating that electrical work subject to the jurisdiction of the department or inspector has been performed without a permit, if a permit was required pursuant to KRS 227.480, 815 KAR 7:120, Kentucky Building Code, or 815 KAR 7:125, Kentucky Residential Code; or
(c) If required by 815 KAR 35:015 or this administrative regulation.
(3)(2) The permit holder or property owner shall be responsible for scheduling an inspection with the electrical inspection authority for the jurisdiction.
(4)(a)(3) Each mandatory electrical inspection shall be conducted and completed within five (5) working days of the permit holder or property owner's request for inspection, except for an inspection performed pursuant to subsection (2)(b) of this section.
(b) An inspection performed pursuant to subsection (2)(b) of this section shall be conducted and completed within five (5) working days of discovery or receipt of information indicating that the electrical work has been performed.
(5) An[4][4] rough-in inspection[inspections] shall be conducted on all permitted electrical work prior to covering or concealment.
(6) If conditions require partial coverage of the permitted electrical work, permission shall be requested of and received from the department or electrical inspector having jurisdiction prior to coverage or concealment.
(7) Covering an inspection without final approval or permission of the department or electrical inspector shall result in the uncovering of the electrical work for inspection, unless the department or inspector having jurisdiction determines that uncovering is[determined] unnecessary to confirm compliance with the National Electrical Code.
(8) A final inspection shall be conducted by the department or electrical inspector having jurisdiction after completion of the permitted electrical work and prior to use[occupancy].

Section 3. Permissive Electrical Inspections. (1) A temporary or partial final inspection may be conducted if:
(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and
(b) The electrical work[installations] subject to temporary or partial inspection[shall be] separate and distinguishable from installations remaining to be inspected.
(2) A voluntary inspection for any electrical construction, installation, alteration, repair, or maintenance, not subject to mandatory requirements as established[set forth] in Section 2 of this administrative regulation, may be requested. The voluntary inspection shall be[and] scheduled with the department or certified electrical inspector having jurisdiction.

Section 4. Exemptions from Mandatory Electrical Inspections. Electrical inspections shall not be required for:
(1) Electrical work beyond the scope of[the] NFPA 70[National Electric Code incorporated by reference in 815 KAR 7:120 and 815]
KAR 7:125;
(2) [Electrical installations, repairs, or maintenance within structures determined by the department as not meeting the definition of "building" under KRS 198B.010(4);
(3) Electrical work that is exempt from permitting requirements pursuant to: (a) Section 105.2 of the Kentucky Building Code, 815 KAR 7:120;
(b) Section 2703.2 of the Kentucky Building Code, 815 KAR 7:120; or
(c) Section R105.2 of the Kentucky Residential Code, 815 KAR 7:125;
(3) [Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.46();
(4) [Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and
(5) [Appliances.

Section 5. Inspections by State Employed Electrical Inspectors.
(1) The department shall conduct electrical inspections in accordance with 815 KAR 35:015.
(2) Prior to the commencement of electrical work subject to state inspection pursuant to this section, the electrical contractor, property owner, or other person responsible for the work to be performed shall request and obtain a permit from the department.
(3) The person requesting a permit pursuant to this section shall submit to the department:
(a) The address and location where the work is to be performed;
(b) The type of electrical service to be constructed, installed, altered, or repaired;
(c) The nature and scope of the work to be performed;
(d) The identity and contact information of the electrical contractor or other persons responsible for performing the work;
(e) The total dollar value of the electrical construction, installation, alteration, or repair;
(f) A copy of the electrical contract, if any; and
(g) The name and contact information of the property owner.
(4) It shall be the obligation of the contractor, property owner, or other person responsible for the work to supply the complete value of the work, including labor and material costs regardless of the purchaser;
(5) The department shall request other documented proof of costs from the responsible person or owner if the true value is in question.
(6) Fees for state inspections.
(a) It shall be the responsibility of the electrical contractor, property owner, or other person responsible for the work to pay to the department an inspection fee required by this subsection.
(b) A certificate of inspection or other final approval of an electrical construction, installation, alteration, or repair shall not be issued by the department until the fee required by this subsection has been paid.
(c) The fee to inspect electrical work having a complete value of less than $8,000 shall be $1.50; and
3. Mileage reimbursed at the rate equivalent to that afforded to state employees pursuant to 200 KAR 2:006, Section 7(4)(a).
(d) The fee to inspect electrical work having a complete value of at least $8,000 but less than $25,000 shall be $500;
(e) The fee to inspect electrical work having a complete value of $25,000 or more shall be calculated as a percentage of the complete value in accordance with the schedule established in this paragraph.

Section 6. Access. All access necessary for inspections shall be provided by the property owner or person obtaining the electrical permit or requesting the electrical inspection.

Section 6.

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

RELATES TO: KRS 216B.010-216B.130


NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)(2) requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2015-2017[2013-2015] State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

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

Section 3. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 6, 2015.

ERIC FRIEDLANDER, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Benefit and Information Exchange
(As Amended at ARRS, September 8, 2015)


RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,[Office of the Kentucky Office of Health Benefit and[Health Information Exchange], has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan or a qualified stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Accreditation" means an accrediting entity recognized by HHS has reviewed the local performance of the health insurer’s health insurance plans and assigned a level of accreditation.

(2) "Actuarial value" is defined by 45 C.F.R. 156.20

(3) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(4) "Agent" is defined by KRS 304.9-020(1).

(5) "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e).

(6) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(7) "Cancellation" is defined by 45 C.F.R. 155.430(e).

(8) "Catastrophic plan" means a health plan that is described in and meets the requirements of 45 C.F.R. 156.155.

(9) "Certificate of authority" is defined by KRS 304.1-110(1).

(10) "Certification" means a determination by the Kentucky Office of Health Benefit and[Health Information Exchange KOHBIE[KOHBHIE]], that a health plan or a stand-alone dental plan has met the requirements established in Sections 2 through 21(14) of this administrative regulation.

(11) "Child-only plan" means an individual health policy that meets the requirements of 45 C.F.R. 156.200(c)(2) and provides coverage:

(a) To an individual under twenty-one (21) years of age; or

(b) That does not restrict the age of the primary subscriber to an individual over age twenty-one (21) and meets the requirements of 45 C.F.R. 156.200(c)(2).

(12) "Consumer operated and oriented plan" or "CO-OP" is defined by 45 C.F.R. 156.656 that means a private, not-for-profit health insurance issuer established in Section 1322 of the Affordable Care Act, 42 U.S.C. 18042, that has a certificate of authority.

(13) "Cost-sharing reduction" or "CSR" means a reduction in cost sharing for:

(a) An eligible individual enrolled in a silver level plan in an individual exchange; or

(b) An individual who is an Indian enrolled in a qualified health plan in an individual exchange.

(14) "Dental insurer" means an insurer defined by KRS 304.17C-010(4), which offers a stand-alone dental[limited health service benefit] plan for dental services.

(15) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(16) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(17) "Enrollee" means an individual enrolled in a qualified health plan or qualified stand-alone dental plan.

(18) "Essential community provider means either a:

(a) Provider defined by 45 C.F.R. 156.235(c) that is determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or

(b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 902 KAR 20.091.

(19) "Essential community provider category" means a provider as described in 45 C.F.R. 156.235(a)(2)(B) and approved by the Secretary of HHS for the Commonwealth of Kentucky.

(20) "Essential health benefits" or "EHB" means the essential health benefits package referenced in 45 C.F.R. 156.2(b) and is a health plan that is defined by 42 U.S.C. 18021(b)(1).

(21) "Exchange participation agreement" means a health plan form or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.

(22) "Indian" is defined by 25 U.S.C. 450b(d).

(23) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.

(24) "Issuer" is defined by 45 C.F.R. 144.103.

(25) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange[conditionally approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SAPP] beginning January 1, 2014[that includes an:

(a) Individual exchange; and

(b) SHOP[Small Business Health Options Program].]

(26) "Kentucky Office of Health Benefit and[Health Information Exchange], "KOHBIE[KOHBHIE]," or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(27) "Market segment" means either small group or individual market.

(28) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:

(a) Bronze level with an actuarial value of sixty (60) percent;

(b) Silver level with an actuarial value of seventy (70) percent;

(c) Gold level with an actuarial value of eighty (80) percent; and

(d) Platinum level with an actuarial value of ninety (90) percent.

(29) "Multi-state plan" means a health plan that is offered under a contract with the U.S. Office of Personnel Management in accordance with Section 1334 of the Affordable Care Act, 42 U.S.C. 18054.

(30) "Office of the Kentucky Health Benefit Exchange" or "Office" means the office created to administer the Kentucky Health Benefit Exchange.

(31) "Participating agent" means an agent who has been certified by the office to participate on the KHBE.

(32) "Participation agreement" means an agreement
between the office and the issuer to offer a QHP or qualified stand-alone dental plan on the KHBE.

(34)] [333][341] “Pediatric dental essential health benefit” means a dental service to prevent disease and promote oral health, restore an oral structure to health and function, and treat an emergency condition provided to an individual under the age of twenty-one (21) years that meets the requirements of 45 C.F.R. 156.110(a)(10) and includes the benefits specified in 907 KAR 1:026.

(35)] [342] “Plan management data template” means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers and qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(36)] [35][333] “Plan year” means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

(37)] [336][341] “Premium” is defined by KRS 304.14-030.

(38)] [337][335] “Provider network” is defined by KRS 304.17A-005(3).

(39)] [338][336] “Qualified dental plan” means a dental plan certified by the office that provides a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), limited to a pediatric dental essential health benefit which complies with the requirements of 45 C.F.R. 156.110(a)(10). (37)] “Qualified employee” means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(40)] [339][338] “Qualified employer” means an employer that elects to make, at a minimum, all full time employees of the employer eligible for one (1) or more QHPs in the small group market offered through the SHOP.

(41)] [340][339] “Qualified health plan” or “QHP” means a health plan that meets the standards described in 45 C.F.R. 156 Subpart B and that has in effect a certification issued by the office.

(42)] [341][340] “Qualified individual” means an individual who has been determined eligible to enroll through the KHBE in a QHP or SADP in the individual market.

(43)] [342][341] “Service area” means a geographical area in which an issuer may offer a QHP.

(44)] [343][342] “SHOP” means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs.

(45)] [344][343] “Small group” is defined by KRS 304.17A-005(42) until superseded by 45 C.F.R. 155.20.

(46)] [345] “Spending account fact sheet” means a document that provides detailed information about a health spending account, flexible spending account, or a health reimbursement arrangement offered by the issuer as part of the benefits in a QHP.

(47)] [346][345] “Stand-alone dental plan” or “SADP” means a dental plan as described by 45 C.F.R. 155.1065 that has been certified by the office to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(48)] [347][346] “Statement of dental coverage” means a written statement for providing information to consumers about an SADP’s coverage, benefits, and cost-sharing.

(49)] [348][347] “Summary of Benefits and Coverage” or “SBC” means a standard format, which complies with the requirements of 45 C.F.R. 147.200, created in accordance with 42 U.S.C. 300gg-15, for providing information to consumers about a health plan’s coverage and benefits.

(50)] [349][348] “System for Electronic Rate and Form Filing” or “SERFF” means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

(51) “Termination” is defined by 45 C.F.R. 155.430(e).

Section 2. QHP Issuer General Requirements. In order for an issuer to participate in the KHBE beginning January 1, 2014, the issuer shall:

(1) Hold a certificate of authority and be in good standing with the Kentucky Department of Insurance;

(2) Be authorized by the office to participate on the KHBE;

(3) For the first year of participation in a new market segment, by April [ [each year], submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;

(4) Enter into a participation agreement with the office;

(5) Offer KHBE certified QHPs in the individual exchange or the SHOP exchange;

(6) Comply with benefit design standards as established in 45 C.F.R. 156.20;

(7) Provide coverage of the:

(a) Essential health benefits; or

(b) If the stand-alone pediatric dental essential health benefit is offered in the KHBE in each county within Kentucky in accordance with 45 C.F.R. 155.1065, essential health benefits excluding pediatric dental essential health benefits;

(8) [Submit to the office][implement and report on] a quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130[or strategies consistent with the standards of 42 U.S.C. 18031(g)];

(b) In the initial QHP certification process, submit an attestation to the office that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5) including:

1. Collection, disclosure, and report of information related to health care quality and outcomes in year two (2) of offering QHPs on the KHBE and annually thereafter; and

2. Implementation of an enrollee satisfaction survey in year two (2) of offering QHPs on the KHBE and annually thereafter;

(9) Comply with applicable standards described in 45 C.F.R. Part 153;

(10) For the individual exchange, offer at least a:

(a) QHP with a silver metal level of coverage;

(b) QHP with a gold metal level of coverage;

(c) Child-only plan; and

(d) Catastrophic plan;

(11) For the SHOP exchange, offer at least a:

(a) QHP with a silver metal level of coverage; and

(b) QHP with a gold metal level of coverage;

(12) [For the individual and SHOP exchange, offer no more than eight] (four) QHPs within a specified metal level of coverage within a market segment. For the purposes of establishing the number of QHPs offered in a metal level, the office shall consider the same plan:

(a) Offered with dental benefits and offered without dental benefits as one (1) QHP; or

(b) Limited to the essential health benefits and offering benefits in excess of the essential health benefits as one (1) QHP;

(13) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(14) Assume that the non-discrimination requirements in 42 U.S.C. 300gg-5 are met;

(15) If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 42 U.S.C. 155.705 for the small group market and in accordance with 900 KAR 10:020;

(16) Allow a registered participating agent to enroll qualified individuals, qualified employers, and qualified employees on KHBE in accordance with the requirements of 900 KAR 10:050(a).[Enroll individuals, employers, and employees in QHPs offered on the exchange];

(b) Enroll qualified individuals in a QHP in a manner that constitutes enrollment through the KHBE; and

(c) Assist individuals in applying for advance payments of premium tax credit and cost sharing reductions;

(17) (a) Offer a QHP in a statewide service area, except as allowed under paragraph (b) of this subsection; or

(b) Offer a QHP in a service area less than statewide if:

1. A QHP is available statewide;
2. The issuer’s service area includes one (1) or more counties;
3. The issuer’s service area is approved by the DOI; and
4. The issuer’s service area is established in a nondiscriminatory manner without regard to:
   a. Race;
   b. Ethnicity;
   c. Language;
   d. Health status of an individual in a service area; or
   e. A factor that excludes a high utilizing, high cost, or medically-underserved population;[and]
(18) Comply with the requirements of KRS Chapter 304.[and]
(19) Submit form KHBE-C2, Kentucky Health Benefit Exchange Attestations; and
(20) Have the option, beginning in plan year 2017, to offer QHPs to include benefits in excess of the essential health benefits if[provided] the issuer also offers a corresponding QHP on the exchange at the same metal level that is limited to the essential health benefits.

Section 3. QHP Rate and Benefit Information. (1) A QHP issuer shall:
(a) Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095(4);
(b) Submit to DOI through the SRFK system:
   1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
   2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and
   3. Plan management data templates;
   (c) Receive approval from DOI for a rate filing prior to implementation of the approved rate; and
   (d) For a rate increase, post the justification prominently on the QHP issuer’s Web site.
(2) A CO-OP, multi-state plan, and qualified stand-alone dental plan shall comply with the requirements established in subsection (1) of this section.

Section 4. QHP Certification[and Recertification] Timeframes.
(1) The office shall take final action on the request for[42] certification no later than twenty-five (25) calendar days prior to the start of the annual open enrollment period[September 30] for the following plan year[or (b) Recertification of QHPs no later than September 12 for the following plan year].
(2) A QHP not certified by twenty-five (25) calendar days prior to the start of the annual open enrollment period[September 30 or recertified by September 18] shall not be offered on the exchange at any time during the following calendar year.

Section 5. Transparency in Coverage. (1) A QHP issuer shall provide the following information to the office in accordance with the standards established by subsection (2) of this section:
(a) Data as identified in 45 C.F.R. 155.1050(a) and 156.220[Claims payment policies and practices];
(b) Periodic financial disclosures;
(c) Data on enrollment;
(d) Data on disenrollment;
(e) Data on the number of denied claims;
(f) Data on rating practices;
(g) SBC written in English for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian;
(h) SBC written in Spanish for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian; with verification that the Spanish language version is a certified translation of the English version;
(i) Information on cost-sharing and payments for out-of-network coverage; and
(j) Information on enrollee rights under Title I of the Affordable Care Act.
(2) A QHP issuer shall:
(a) Submit, in an accurate and timely manner, to be determined by HHS, the information described in subsection (1)(a), (f), and (g) of this section to the KHBE, HHS, and DOI;[and]
(b) Provide public access to the information described in subsection (1) of this section;
(c) Provide the items described in subsection (1)(b) and (d) of this section to KHBE within five (5) calendar days of the date DOI has approved rate and form filings in SRFK; and
(d) Provide the items described in subsection (1)(c) and (e) of this section to KHBE within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (c) of this subsection.

Section 6. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall:
(1) Comply with issuer marketing practices provided under KRS Chapter 304.17A and 806 KAR 12:010; and
(2) Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 7. Network Adequacy Standards. (1) A QHP issuer shall ensure that the provider network of a QHP:
(a) Is available to all enrollees within the QHP service area;
(b) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 8 of this administrative regulation;
(c) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be provided in a timely manner;[and]
(d) Meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515; and
(2) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.
Section 8. Network Adequacy Standards for Essential Community Providers. A QHP issuer shall:

(1)(a) Demonstrate a provider network, which includes at least the minimum twenty (20) percent of available essential community providers in the QHP service area participate in the issuer’s provider network as required by 45 C.F.R. 156.235(a)(2)(ii) and

(b) Offer a contract to:

1. At least one (1) essential community provider in each essential community provider category in each county in the service area where an essential community provider in that category is available; and

2. Available Indian providers in the service area[ as identified in Supplementary Response: Inclusion of Essential Community Providers, incorporated by reference in this administrative regulation]; or

(2) If unable to comply with the requirements in subsection (1) of this section,

(a) Demonstrate a provider network which includes at least ten (10) percent of available essential community providers in the QHP service area, and

(b) submit a supplementary response as identified in Supplementary Response: Inclusion of Essential Community Providers as incorporated by reference in this administrative regulation.

Section 9. Health Plan Applications and Notices. A QHP issuer shall provide an application, including the streamlined application designated by the office, and notices to enrollees pursuant to standards described in 45 C.F.R. 155.230.

Section 10. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered:

(1) Through the KHBE;

(2) By an issuer outside the KHBE; or

(3) Through a participating agent.

Section 11. Enrollment Periods for Qualified Individuals. A QHP issuer participating in the individual market shall accept an enrollment during the open enrollment period or special enrollment period for a qualified individual participating in the individual market with effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f) and 45 C.F.R. 155.420(b): (a) Enroll a qualified individual during the initial and annual open enrollment periods described in 45 C.F.R. 155.410(b) and (e) and comply with the effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f) and (b) Maintain a readily available, at a minimum, special enrollment periods described in 45 C.F.R. 155.420(d), for QHPs and comply with the effective dates of coverage established by the KHBE in accordance with 45 C.F.R. 155.420(b).

(2) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Premium invoices shall be generated to a qualified individual within five (5) business days from receipt of KHBE enrollment transactions.

(4) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of the initial invoice to submit premium payment before coverage can be cancelled.

(5) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of a corrected invoice to submit premium payment before coverage can be terminated.

(6) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is submitted by the individual.

(7) The issuer shall mail proof of coverage, including insurance identification cards, to enrollees within ten (10) calendar days of receipt of initial premium payment for ninety-nine (99) percent of enrollees.

Section 12. Enrollment Process for Qualified Individuals. A QHP issuer shall process enrollment of an individual in accordance with this section.

(2) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:

(a) Notifies the QHP issuer that the individual is a qualified individual; and

(b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.430(a).

(3) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:

(a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or

(b) Ensure the applicant received an eligibility determination for coverage through the KHBE through the KHBE Internet Web site.

(4) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements established by the office pursuant to 45 C.F.R. 155.260 and in an electronic format that meets the requirements established by the office pursuant to 45 C.F.R. 155.270.

(5) A QHP issuer shall follow the premium payment process established by the KHBE in accordance with 45 C.F.R. 155.240.

(6) A QHP issuer shall provide new enrollees with an enrollment information package that complies with the accessibility and readability requirements established by 45 C.F.R. 155.230(b).

(7) A QHP issuer shall reconcile enrollment files with the KHBE no less than once a month in accordance with 45 C.F.R. 155.400(d).

(8) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with KHBE requirements established by 45 C.F.R. 155.400(b)(2).

Section 13. Termination or Cancellation of Coverage for Qualified Individuals. A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).

(2) If an enrollee’s coverage in a QHP is terminated by the issuer for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d); and

(b) Notify the KHBE of the termination effective date and reason for termination; and

(c) Comply with the requirements of KRS 304.17A.240 to 304.17A.245.

(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall:

(a) Include the grace period for enrollees receiving advance payments of the premium tax credits as described in 45 C.F.R. 155.240(d); and

(b) Be applied uniformly to enrollees in similar circumstances.

(4) Prior to termination of coverage, a QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one (1) full month’s premium during the benefit year. During the grace period, the QHP issuer:

(a) Shall pay claims for services provided to the enrollee in the first month of the grace period; and

2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;

(b) Shall notify the KHBE[HHIS] of the non-payment of the premium due; and

(c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(5) For the three (3) months grace period described in subsection (4) of this section, A QHP issuer shall:

(a) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the U.S. Department of the Treasury; and

(b) Return advance payments of the premium tax credit paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in subsection (7) of this section.
(6) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(7) If an enrollee receiving advance payments of the premium tax credit exhausts the three (3) month grace period in subsection (4) of this section without paying the outstanding premiums, the QHP issuer shall terminate the enrollee’s coverage on the effective date of termination described in 45 C.F.R. 155.430(d)(4) if the QHP issuer meets the notice requirement specified in subsection (2) of this section.

(8) A QHP issuer shall maintain records in accordance with KHBE requirements established pursuant to 45 C.F.R. 155.430(c).

(9) A QHP issuer shall comply with the termination of coverage effective dates as described in 45 C.F.R. 155.430(d).

(10) A QHP issuer may cancel coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2) and (e).

(11) If an enrollee’s coverage in a QHP is cancelled by the issuer for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of cancellation of coverage that includes the reason for cancellation within at least thirty (30) days of the actual date to cancel coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) Notify the KHBE of the cancellation effective date and reason for cancellation; and

(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(12) Cancellation of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall be applied uniformly to enrollees in similar circumstances.

(13) A QHP issuer shall comply with the cancellation of coverage effective dates as described in 45 C.F.R. 155.430(d).

(14) If coverage of an enrollee is terminated or cancelled by the KHBE for any reason, the QHP issuer shall provide the enrollee a notice of the termination or cancellation within fifteen (15) days of receipt of a termination or cancellation document transaction from the KHBE.

Section 14. Accreditation of QHP Issuers. (1) A QHP issuer shall:

(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1); and

(b) Pursuant to 45 C.F.R. 156.275(a)(2) authorize the accrediting entity that accredits the QHP issuer to release to the KHBE and HHS:

1. A copy of the most recent accreditation survey; and

2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings.

(2) (a) A QHP issuer shall be accredited prior to the fourth year of QHP certification and in every subsequent year of certification thereafter in accordance with the requirements and timeline identified under 45 C.F.R. 155.1045.

(b) A QHP issuer seeking certification of a QHP that has not received accreditation for the QHP shall submit an attestation to the office that the issuer shall obtain evidence to support that the issuer has a plan for obtaining accreditation in accordance with the requirements and timeline identified in paragraph (a) of this subsection.

(3) The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 15. Recertification, Non-renewal, and Decertification of QHPs. (1) A QHP shall be recertified in accordance with the requirements of this administrative regulation every two (2) years no later than September 15 for the following two (2) plan years.

(2) An issuer shall submit to the exchange a request for recertification of a QHP at least 120 days prior to an expiration of a certification.

(3) If a QHP issuer elects not to seek recertification with the office, the QHP issuer, at a minimum, shall:

(a) Notify the office of its decision prior to the beginning of the recertification process and follow the procedures adopted by the KHBE in accordance with 45 C.F.R. 155.1075;

(b) Provide benefits for enrollees through the final day of the plan or benefit year;

(c) Submit reports as required by the office for the final plan or benefit year of the certification;

(d) Provide notices to enrollees in accordance with Section 13 of this administrative regulation;

(e) Terminate coverage of enrollees in accordance with 45 C.F.R. 155.1080, as applicable; and

(f) Comply with requirements of KRS 304.17A-240 and 304.17A-245, as applicable.

(4) If a QHP is decertified by the office pursuant to 45 C.F.R. 155.1080 or withdrawn by the issuer after certification, the QHP issuer shall terminate coverage of enrollees only after:

(a) The KHBE has provided notification as required by 45 C.F.R. 155.1080(e);

(b) Enrollees have an opportunity to enroll in other coverage; and

(c) The QHP issuer has complied with the requirements of KRS 304.17A-240 to 304.17A-245, as applicable.

(5) A QHP issuer fails to meet ongoing compliance requirements of Section 20 of this administrative regulation, the office may require the issuer to:

(a) Submit a corrective action plan to address deficiencies to ongoing compliance requirements within thirty (30) days of notification of the deficiency; and

(b) Submit evidence of compliance with the corrective action plan within the timeframes established in the office approved corrective plan.

(6) If the office finds that the QHP issuer failed to meet the requirements of subsection (2) of this section, the office may implement a prohibition against new enrollments on KHBE for the QHP issuer and market segment out of compliance or may decertify all plans offered by the QHP issuer within the market segment.

Section 16. General Requirements for a Stand-alone Dental Plan. (1) In order for a dental insurer to participate in the KHBE beginning January 1, 2014 and offer a stand-alone dental plan, the dental insurer shall:

(a) Hold a certificate of authority that would permit the issuer to offer dental plans and be in good standing with the Kentucky Department of Insurance;

(b) Be authorized by the office to participate on the KHBE;

(c) For the first year of participation in a new market segment, by April 1st of each year, submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;

(d) Enter into a participation agreement with the office;

(e) Offer a pediatric dental plan certified by the office in accordance with this administrative regulation in the individual exchange or SHOP exchange that shall:

1. Comply with the requirements of KRS Chapter 304 Subtitle 17C;

2. Submit to DOI through the SERFF system:
   a. Form filings in compliance with KRS Chapter 304;
   b. Rate filings in compliance with KRS 304.17-380; and
   c. Dental plan management data templates;

3. Offer a stand-alone dental plan that shall:
   1. Provide the [Be limited to a] pediatric dental essential health benefits [benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;
   2. Pursuant to 45 C.F.R. 155.1050, provide within a variation of plus or minus two (2) percentage points:
      a. A low level of coverage with an actuarial value of seventy (70) percent; and
      b. A high level of coverage with an actuarial value of eighty-five (85) percent; and
   3. Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental EHB under 45 C.F.R. 155.1085 at or below:
      a. $350($1,000) for a plan with one (1) child enrollee; or
b. $700[$2,000] for a plan with two (2) or more child enrollees;
(g) Comply with the:
1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;
2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and
3. Essential community provider requirements [requirement] in 45 C.F.R. 156.235;
(h) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and
(i) Make its provider directory for a QHP available:
1. To the KHBE for online publication;
2. To potential enrollees in hard copy upon request; and
3. In accordance with KRS 304.17A-590.
(2) A dental insurer offering a stand-alone dental plan participating in the KHBE shall provide the following information to the office beginning January 1, 2017:
(a) Statement of dental coverage written in English consistent with the requirements in KRS 304.12-020 and 806 KAR 12-010;
(b) Statement of dental coverage written in Spanish with verification that the Spanish language version is a certified translation of the English version;
(c) The item described in paragraph (a) of this subsection within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and
(d) The item described in paragraph (b) of this subsection within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (a) of this subsection [May offer a stand-alone dental plan which includes coverage for individuals regardless of age which includes at a minimum a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(1)(A)(i) coverage for individuals up to twenty-one (21) years of age; and (b) If electing to offer the plan specified in paragraph (a) of this subsection, shall comply with the requirements of subsection (1) of this section].

Section 17. Essential health benefits for individuals three (3) years of age and up to twenty-one (21) years of age. The KHBE shall ensure that an individual’s (3) years of age and up to age twenty-one (21) years of age eligible to enroll in a QHP shall obtain coverage for pediatric dental coverage.

Section 18. Enforcement. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 19. Timeframes for Transactions. (1) A QHP issuer[issuers] shall generate a required acknowledgement and process all KHBE initiated transactions within forty-eight (48) hours of receipt of a complete electronic transaction from the KHBE for ninety-five (95) percent of enrollments.
(2) A QHP issuer[issuers] shall provide effectuation transactions to the KHBE within seventy-two (72) forty-eight (48) hours of receipt of the initial payment and issuer initiated cancellation and termination transactions within forty-eight (48) hours of the cancellation or termination of coverage for ninety-five (95) percent of cancellations and terminations.

Section 20. On-going Compliance. The office shall be responsible for enforcing the requirements referenced in 45 C.F.R. 155.1010(a)(2).

Section 21. Issuer Appeals. (1) An issuer may appeal the office’s decision to:
(a) Deny certification of a QHP;
(b) Implement a prohibition against new enrollments by a QHP issuer in a market segment[Deny recertification of a QHP]; or
(c) Decertify a QHP.
(2) An issuer appeal identified in subsection (1) of this section shall be made to the office in accordance with KRS Chapter 13B.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) [Chapter 7: Instructions for the Essential Community Providers Application Section, April 2013 version][b] “Form KHBE-C1, Issuer Participation Intent Form”, May 2015;
(b) “Form KHBE-C2, Kentucky Health Benefit Exchange Attestations”, May 2015 [revised October, 2013]; and
(c) “Supplementary Response: Inclusion of Essential Community Providers”, May 2015 [April 2013 version].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Office of Health Benefit [and] Information Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email address tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, September 8, 2015)


STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 218A.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 authorizes [allows] the cabinet to promulgate administrative regulations to deny, revoke, modify, or suspend a license issued by the cabinet, if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility’s license or the person’s employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership requirement of KRS 218A.175.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General, to deny, suspend, or revoke a pain management facility’s license to operate.
(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.
(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility, [or] including a satellite facility, is vested.
(4) "National and State Background Check Program" means an initiative implemented by the cabinet pursuant to 906 KAR 1:190[, with available appropriations and funding,] for the performance of:
   (a) Registry checks; and
   (b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175(1) and includes a satellite facility.

(6) "Satellite facility" means a pain management facility permitted by KRS 218A.175(2)(b) to open and operate under the license of a parent pain management facility that:
   (a) Is licensed under this administrative regulation pursuant to the physician-ownership exemption of KRS 218A.175(2)(a); and
   (b) Does not have a pending adverse action.

(7) "Unencumbered license" means a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to a controlled substance.

Section 2. Satellite Facilities. A satellite facility shall comply with the requirements established by this administrative regulation for parent pain management facilities, including background checks, administration, staffing, equipment, and physical environment.

Section 3. Ownership. (1) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility’s license pursuant to Section 11(4) of this administrative regulation if:
   (a) An administrative sanction or criminal conviction relating to a controlled substance is imposed on the parent or satellite facility[,] or any person contracted or employed by the parent/facility [or satellite facility] for an act or omission done within the scope of the facility’s licensure or the person’s employment; or
   (b) A change of ownership occurs, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2)(b).

   (2)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

   (b) The pain management facility’s license shall not be transferred to a new owner, except for a transfer of whole or partial ownership interest in the facility as permitted by KRS 218A.175(2)(b).

Section 4. Background Checks and Prohibition Against Employment. (1)(a) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to a fingerprint-supported national and state criminal background check.

   (b) A facility may use Kentucky’s National and State Background Check Program established by 906 KAR 1:190 to satisfy the criminal background check requirement of paragraph (a) of this subsection [an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until each individual is phased into the cabinet’s National and State Background Check Program].

   (2)(a) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

   (a) Whose Drug Enforcement Administration number has ever been revoked;

   (b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

   (c) Who has had any disciplinary limitation placed on him or her license by:

      1. The Kentucky Board of Medical Licensure;
      2. The Kentucky Board of Nursing;
      3. The Kentucky Board of Dentistry;

      4. The Kentucky Board of Optometric Examiners;
      5. The State Board of Podiatry;
      6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

      7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

   (d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

   (3) In addition to physicians and prescribing practitioners, a facility shall not employ any individual directly, or by contract, who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, a drug-related offense as described in subsection (2)(d) of this section.

Section 5. Licensure Application, Fee, and Renewal. (1) A licensee which elects to open and operate no more than two [additional satellite facilities][An applicant for an initial license as a pain management facility shall:

   (a) As a condition precedent to adding a satellite facility to the parent pain management facility’s license, ensure that the satellite facility is[licensure, be] in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the satellite facility; and

   (b) Submit a completed Application for License to Operate a Pain Management Facility prior to opening the satellite facility accompanied by a fee of $2,000 per each satellite facility.

   (2) To qualify for licensure under this administrative regulation, a completed Application for License to Operate a Pain Management Facility shall be:

   (a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and

   (b) Submitted to the cabinet annually thereafter.

   (3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be $2,000, per facility.

   (4) A license shall:

   (a) Expire one (1) year from the date of issuance; and

   (b) Be renewed if the licensee:

      1. Submits a completed Application for License to Operate a Pain Management Facility accompanied by an annual re-licensure fee of $2,000, plus a fee of $2,000 per satellite facility[annual re-licensure fee]; and

      2. Has no pending adverse action.

   (5) A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:

      (a) The items required under subsection (2)(4) of this section have been submitted; and

      (b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.

Section 6. Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment in that includes the use of controlled substances, the Office of Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility’s patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility’s practitioners are prescribed controlled substances.

Section 7. Administration Requirements for Parent and Satellite Pain Management Facilities. (1) [pain management]
facility shall be located in a fixed site.

(2) Each [pain management] facility shall:
   (a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and
   (b) post the license conspicuously in a public area of the facility.

(3) Licensee.
   (a) The licensee shall be legally responsible for:
      1. All activities within the [pain management] facility, including the actions of the physicians and prescribing practitioners; and
      2. Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 to 971 et. seq.) and KRS Chapter 218A, 902 KAR Chapter 20, and 902 KAR Chapter 55.
   (b) The licensee shall establish lines of authority and designate an administrator who:
      1. May serve in a dual role as the facility’s medical director; and
      2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:
   (a) A description of organizational structure, staffing, and allocation of responsibility and accountability;
   (b) A description of linkages with inpatient facilities and other providers;
   (c) Policies and procedures for the guidance and control of personnel performances;
   (d) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;
   (e) A description of the administrative and patient care records and reports;
   (f) Procedures to be followed if the facility performs any functions related to the storage, handling, and administration of drugs and biologicals; and
   (g) Procedures for compliance with KRS 218A.175(4).

(5) Referral. If an individual seeks or is in need of care and treatment beyond the scope of services offered by the [pain management] facility, the facility:
   (a) Shall immediately advise the individual that he or she should seek services elsewhere; and
   (b) May make a referral on behalf of the individual.

(6) Personnel.
   (a) Prescribers. Each prescriber employed or contracted by [pain management] facility shall be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311 and 314.
   (b) Medical director.

1. The facility’s medical director shall:
   (a) Be responsible for complying with all requirements related to the licensure and operation of the facility;
   (b) Be physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility;
   (c) Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311; and
   (d) Not be permitted to serve in a dual role as the medical director of both the parent facility and a satellite facility.

2. Be an owner of or practice in the specific facility applying for licensure as a pain management facility and who:
   (a) Has completed an accredited residency which included a component in the practice of pain management;
   (b) Is eligible under and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility’s medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and
   (c) Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements established in KRS 218A.175(3) to continue to be qualified as the facility’s medical director.

3. Within ten (10) calendar days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director, until a permanent director is secured for the facility.

4. The facility’s medical director shall sign and submit the Pain Management Facility Data Reporting Form to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:
   1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;
   2. The number of patients discharged due to drug abuse;
   3. The number of patients discharged due to drug diversion; and
   4. The number of patients treated at the facility whose domicile is located somewhere else than in Kentucky. A patient’s domicile shall be the patient’s fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

5. The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

6. Staffing. At least one (1) physician and one (1) practical nurse, licensed practical nurse, or registered nurse shall be on duty in the facility during all hours the facility is operational.

7. Job descriptions. There shall be a written job description for each position which shall be reviewed and revised as necessary.

8. Personnel records. Current personnel records shall be maintained for each employee and include the following:
   (a) Name, address, and social security number;
   (b) Evidence of current certification or licensure of personnel;
   (c) Records of training and experience;
   (d) Records of each performance evaluation; and
   (e) Annual verification of certification or licensure.

9. In-service training programs relating to their respective job activities.

10. All licensed prescribers in a [pain management] facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education. Each licensed physician who prescribes or dispenses a controlled substance to a patient in the facility as part of his or her employment agreement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the facility.

11. Quality assurance program.
   (a) Each [pain management] facility shall have an ongoing quality assurance program that:
      1. Monitors and evaluates the quality and appropriateness of patient care;
      2. Evaluates methods to improve patient care;
      3. Identifies and corrects deficiencies within the facility;
      4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and
      5. Provides for opportunities to improve the facility’s performance and to enhance and improve the quality of care.
provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, medical evaluation, and analysis of the frequency and causes of adverse incidents to patients;
2. The identification of trends or patterns of incidents;
3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and
4. The documentation of these functions and periodic review no less than quarterly of this information by the designated physician or prescribing practitioner.

(12) Medical records. Each [pain management] facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) Each licensed prescriber in a [pain management] facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by the respective professional licensing board.

(b) A representative from the Office of Inspector General shall review facility records, including the facility’s patient records, to assure compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 which establishes standards for licensees authorized to prescribe or dispense controlled substances.

(14) Kentucky Health Information Exchange (KHIE). Each facility shall participate in KHIE pursuant to the requirements of 900 KAR 9:010.

Section 8.[Z] Equipment. Equipment used for direct patient care in a [pain management] facility shall comply with the requirements established in this section.

1. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated.

2. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations.

3. A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9.[Z] Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A new [an initial] license to operate a satellite [pain management] facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal’s office for the satellite facility or new location.

(3) Physical location and overall environment.

(a) The facility shall:
1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;
2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;
3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;
4. Have a reception and waiting area;
5. Provide a restroom;
6. Have an administrative area, including room for storage of medical records, supplies, and equipment;
7. Have private patient examination rooms;
8. Have treatment rooms, if treatment is being provided to the patients; and
9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility’s medical director and the names of all physicians and prescribers practicing in the facility.

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

4. Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, beds, and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:
1. Hot and cold water and blade type operating handles;
2. Knee or foot controls; or
3. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:
1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;
2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;
3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and
4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:
1. Universal blood and body fluid precautions;
2. Precautions against airborne transmission of infections;
3. Work restrictions for employees with infectious diseases; and
4. Cleaning, disinfection, and sterilization methods used for equipment and the environment; and[

(b) Annual [The facility shall provide] in-service education programs [annually] on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

(a) Labeled;
(b) Stored in closed metal containers;
(c) Kept separate from other cleaning materials; and
(d) Kept in a locked storage area apart from the exam room.

(7) The facility shall be kept free from insects and rodents, and their nesting places.

(8) Garbage and trash:

(a) Shall be removed from the premises regularly; and
(b) Containers shall be cleaned daily.

9. A facility shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by
Section 10. Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation pursuant to KRS 216B.042.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility’s records pursuant to KRS 216B.105(2).

(3) Violations.
(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified during an inspection, and shall specify:
   a. The date by which the violation shall be corrected;
   b. The specific measures utilized to correct the violation; and
   c. The specific measures utilized to ensure the violation will not recur.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

   1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:
      a. The date by which the violation shall be corrected;
      b. The specific measures utilized to correct the violation; and
      c. The specific measures utilized to ensure the violation will not recur.

   2. The Office of Inspector General shall review the plan and notify the facility of the decision to:
      a. Accept the plan;
      b. Not accept the plan; or
      c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

   3. The notice specified in subparagraph 2.b. of this paragraph shall:
      a. State the specific reasons the plan is unacceptable; and
      b. Require an amended plan of correction within ten (10) days of receipt of the notice.

   4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:
      a. Accept the plan;
      b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
      c. Require the facility to submit an acceptable plan of correction.

   5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license shall be denied, suspended, or revoked in accordance with KRS 216B.105(2).

   6. Complaints. An unannounced inspection shall be conducted:
      a. In response to a credible, relevant complaint or allegation; and
      b. According to procedures established in this section.

Section 11. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility at the time of annual renewal or the addition of a satellite facility if:

(a) The initial application is received by the cabinet after close of business on July 20, 2012.

(b) The facility fails to comply with Section 4(3)(a), (b), or (c), or 7(6)(a) through (d) of this administrative regulation.

(c) Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action.

(d) An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility’s license or the person’s employment; or

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation.

(2) If during the initial inspection of the pain management facility, the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Suspend a facility’s license pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), has been a substantial failure by the facility, or its satellite facility, to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility’s license or the person’s employment;

(c) A change of ownership has occurred, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2);

(d) The facility fails to accept private health insurance as one allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient’s insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation; or

(f) The facility fails to comply with Section 4(3)(a), (b), or (c), or 7(6)(a) through (d) of this administrative regulation.

(4) The denial or revocation of a facility’s license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particulars for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility’s license if the cabinet has probable cause to believe that:

   1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility’s patients or of the general public; or

   2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b) The pain management facility shall cease operating immediately on the date the facility is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility’s license pursuant to paragraph (a) of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional
licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet’s hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility’s license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of the emergency suspension;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12 [14] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 20:240, “Application for License to Operate a Pain Management Facility”, June (July) 2015 [June 2012] edition; and


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

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 25, 2015 at noon
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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, September 8, 2015)

902 KAR 45:120. Inspection and permit fees:[47][permit fees:] hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.


authorize the Secretary for the Cabinet for Health and Family Services to establish by administrative regulation a schedule of reasonable fees to be paid by hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services. This administrative regulation establishes the permit and inspection fees to be charged to hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.

Section 1. Fees for Inspections. An annual fee shall be assessed for an inspection conducted by the cabinet or its representative of a hotel, manufactured or mobile home community, recreational vehicle community, or youth camp, or for sampling of a private water supply according to the following schedule:

1. A hotel with:
   (a) One (1) to twenty-five (25) rooms - $1100[515][fifty-three (53) dollars];
   (b) Twenty-six (26) to fifty (50) rooms - $1925[S190][ninety (90) dollars];
   (c) Fifty-one (51) to 100 rooms - $1525[S225][ninety-five (95) dollars];
   (d) 101 to 200 rooms - $1750[S270][one hundred (100)];
   (e) 201 to 300 rooms - $2000[S260][two hundred (200)];
   (f) 301 to 400 rooms - $2250[S350][two hundred and fifty (250)];
   (g) 401 or more rooms - $2500[S400][three hundred (300)];

2. Youth camps:
   (a) Day youth camp - seventy-five (75)[forty (40)] dollars;
   (b) Primitive youth camp - fifty (50)[forty (40)] dollars;
   (c) Residential youth camp with:
      1. One (1) to twenty (20) beds - seventy-five (75)[forty (40)] dollars;
      2. Twenty-one (21) to fifty (50) beds - $1000[S190][fifty (50) dollars];
      3. Fifty-one (51) or more beds - $1250[S225];

3. (A) manufactured or mobile home community or recreational vehicle community - seventy-five (75) dollars; or
   (4)[sixty (60) dollars]; or (3) Sampling of private water supply - fifty (50)[fifteen (15)] dollars.

Section 2. Permit Fees for Hotels and Manufactured or Mobile Home Communities and Recreational Vehicle Communities. (1) An application for an annual permit to operate a hotel shall be accompanied by a fee of twenty-five (25)[sixty (60)] dollars.

(2) The fee for an annual[a] permit to operate a manufactured or mobile home park, or recreational vehicle park shall depend on the number of spaces in the park as set forth in the following schedule:

(a) One (1) to ten (10) spaces - fifty (50) dollars;
(b) Eleven (11) to fifty (50) spaces - $150[S150];
(c) Fifty-one (51) to 100 spaces - $160[S160];
(d) 101 to 200 spaces - $170[S170];
(e) 201 or more spaces - $180[S180];

(3) An application for a permit to construct or alter a manufactured or mobile home community or recreational vehicle community shall be accompanied by a fee of sixty (60)[forty-seven (47)] dollars.

Section 3. Payment of Fees. Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate.

Section 4. Exemptions. (1) A facility operated by the Cabinet for Health and Family Services or the Justice Cabinet shall be exempt from the payment of inspection fees.

(2) If a local health department samples a private water supply as part of an investigation of illness, the sample shall be taken without charging a fee.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, September 8, 2015)

907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.


STRICT AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 216B.042, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.560(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services’ reimbursement policies for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Section 1. Definitions. (1) “Advanced practice registered nurse” or “APRN” is defined by KRS 314.011(7). (2) “Alternative payment methodology” or “APM” means a reimbursement that is an alternative to the standard reimbursement established in Section 3 of this administrative regulation in accordance with 42 U.S.C. 1396a(bb)(6). “Allowable costs” means costs that are incurred by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center that are reasonable in amount and proper and necessary for the efficient delivery of services.

(3) “Audit” means an examination that is based on: (a) Twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and (b) Twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and (c) Is based on:

2. A paid claims listing corresponding to the twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and

14. “Health care provider” means, for:
(a) A primary care center, an FQHC, an FQHC look-alike, or an RHC:
1. A licensed physician;
2. A licensed osteopath physician;
3. A licensed podiatrist;
4. A licensed optometrist;
5. A [licensed or certified] advanced practice registered nurse;
6. A licensed dentist or oral surgeon;
7. A physician assistant;
8. A licensed clinical social worker; [or]
9. A licensed [clinical] psychologist;
10. A licensed marriage and family therapist;
11. A licensed professional counseling;
12. A licensed psychological practitioner;
13. A certified psychologist with autonomous functioning or a practitioner who is
   a. Authorized pursuant to 907 KAR 1:054 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC; and
   b. [who is] Not listed in subparagraphs 1 through 13 of this paragraph; or
(b) An FQHC, FQHC look-alike, or RHC:
1. A provider or practitioner listed in paragraph (a) of this subsection;
2. Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services. a. Licensed professional counseling; or
b. Licensed marriage and family therapist; or
c. An FQHC or FQHC look-alike, in addition to the professionals established in paragraph (a) of this subsection:
1. A resident in the presence of a teaching physician; or
2. A resident without the presence of a teaching physician:
a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;
b. A paid claims listing corresponding to the twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and
3. A [licensed or certified] advanced practice registered nurse;
4. A licensed dentist or oral surgeon;
5. A physician assistant;
6. A licensed clinical social worker; [or]
7. A licensed psychologist; [or]
8. A licensed professional counseling;
9. A certified psychologist with autonomous functioning; or
10. A practitioner who is:
   a. Authorized pursuant to 907 KAR 1:054 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC; and
   b. [who is] Not listed in subparagraphs 1 through 13 of this paragraph; or
(b) An FQHC, FQHC look-alike, or RHC:
1. A provider or practitioner listed in paragraph (a) of this subsection; or
2. Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services. a. Licensed professional counseling; or
b. Licensed marriage and family therapist; or
c. An FQHC or FQHC look-alike, in addition to the professionals established in paragraph (a) of this subsection:
1. A resident in the presence of a teaching physician; or
2. A resident without the presence of a teaching physician:
a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;
b. A paid claims listing corresponding to the twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and
3. A [licensed or certified] advanced practice registered nurse;
4. A licensed dentist or oral surgeon;
5. A physician assistant;
6. A licensed clinical social worker; [or]
7. A licensed psychologist; [or]
8. A licensed professional counseling;
9. A certified psychologist with autonomous functioning; or
10. A practitioner who is:
   a. Authorized pursuant to 907 KAR 1:054 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC; and
   b. [who is] Not listed in subparagraphs 1 through 13 of this paragraph; or
(b) An FQHC, FQHC look-alike, or RHC:
1. A provider or practitioner listed in paragraph (a) of this subsection; or
2. Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services. a. Licensed professional counseling; or
b. Licensed marriage and family therapist; or
c. An FQHC or FQHC look-alike, in addition to the professionals established in paragraph (a) of this subsection:
1. A resident in the presence of a teaching physician; or
2. A resident without the presence of a teaching physician:
a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;
b. A paid claims listing corresponding to the twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and
3. A [licensed or certified] advanced practice registered nurse;
4. A licensed dentist or oral surgeon;
5. A physician assistant;
6. A licensed clinical social worker; [or]
7. A licensed psychologist; [or]
8. A licensed professional counseling;
9. A certified psychologist with autonomous functioning; or
10. A practitioner who is:
   a. Authorized pursuant to 907 KAR 1:054 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC; and
   b. [who is] Not listed in subparagraphs 1 through 13 of this paragraph;
(i) Does not direct the care of more than four (4) residents at any given time; and
(ii) Directs care from a proximity that constitutes immediate availability; and
d. The teaching physician:
(i) Has no other responsibilities at the time;
(ii) Has management responsibility for any recipient seen by the resident;
(iii) Ensures that the services furnished are appropriate;
(iv) Reviews with the resident, during or immediately after each visit by a recipient, the recipient’s medical history, physical examination, diagnosis, and record of tests or therapies; and
(v) Documents the extent of the teaching physician's participation in the review and direction of the services furnished to each recipient.

(15)(42) "Interim PPS rate" means an all-inclusive per visit[a reimbursement amount established by the department to pay an FQHC, FQHC look-alike, or an RHC, or a PCC for covered services prior to the establishment of a final PPS rate.

(16)(43) "Licensed clinical social worker" means an individual who is currently licensed in accordance with 907 KAR 3:130.

(17)(44) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(18)(45) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(19) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(20)(46) "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.

(21) "Medical Group Management Association Medical Directorship and On-Call Compensation Survey" means a report developed and owned by the Medical Group Management Association that:
(a) Highlights the critical relationship between medical director compensation and time spent in the medical director function;
(b) Aligns medical director compensation with time spent as medical director; and
(c) Contains tables illustrating the relationship of medical director salary to time spent in the medical director function;

(22)(47) "Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:
(a) Highlights the critical relationship between physician salaries and productivity;
(b) Is used to align physician salaries and benefits with provider productivity; and
(c) Contains:
   1. Performance ratios illustrating the relationship between compensation and production; and
   2. Comprehensive and summary data tables that cover many specialties.

(23)(48) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(24)(49) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(I).

(25) "Paid claims listing" means a report of claims paid by the department for a given FQHC, FQHC look-alike, or RHC.

(26)(50) "Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that is:
(a) Licensed and operating with a unique Kentucky Medicaid program provider number;
(b) Operating under the same management as a satellite facility; and
(c) The original facility that existed prior to the existence of a satellite facility.

(27) "PCC” or "primary care center” means an entity that is currently licensed as a PCC in accordance with 902 KAR 20:058.

(28)(51) "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(29)(52) "Physician assistant" is defined by KRS 311.840(3).

(30)(53) "PPS" means prospective payment system.

(31)(54) "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, or RHC (or a PCC) under the prospective payment system.

(32)(55) "Reasonable cost" means:
(a) A cost as determined by the:
(1)(a) Applicable Medicare cost reimbursement principles established in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and
(2) Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region; and
(b) Costs determined to be reasonable in accordance with a comprehensive desk review or audit.

(33)(56) "Recipient" is defined by KRS 205.8451(9).

(34)(57) "RHC" or "rural health clinic" is defined in 42 C.F.R. 483.240(1).

(35)(58) "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:
(a) Is at a different location than the parent facility; and
(b) Operates under the same management as the parent facility.

(36)(59) "Telehealth" means two (2)-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient’s health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

(37)(60) "Visit" means an encounter which occurs via Telehealth between a recipient or enrollee and a health care provider during which an FQHC, FQHC look-alike, or RHC service is delivered and that:
(a) Is at a different location than the parent facility; and
(b) Operates under the same management as the parent facility.

(38)(61) "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(39)(62) "Physician assistant" is defined by KRS 311.840(3).

(40)(63) "PPS" means prospective payment system.

(41)(64) "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, or RHC (or a PCC) under the prospective payment system.

(42)(65) "Reasonable cost" means:
(a) A cost as determined by the:
(1)(a) Applicable Medicare cost reimbursement principles established in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and
(2) Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region; and
(b) Costs determined to be reasonable in accordance with a comprehensive desk review or audit.

(43)(66) "Recipient" is defined by KRS 205.8451(9).

(44)(67) "RHC" or "rural health clinic" is defined in 42 C.F.R. 483.240(1).

(45)(68) "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:
(a) Is at a different location than the parent facility; and
(b) Operates under the same management as the parent facility.

(46)(69) "Telehealth" means two (2)-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient’s health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

(47)(70) "Visit" means an encounter which occurs via Telehealth between a recipient or enrollee and a health care provider during which an FQHC, FQHC look-alike, or RHC service is delivered and that:
(a) Is at a different location than the parent facility; and
(b) Operates under the same management as the parent facility.

Section 2. Provider Participation Requirements. (1)(a) A participating FQHC, FQHC look-alike, RHC, or PCC shall be currently:
1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) A satellite facility of an FQHC, an FQHC look-alike, or RHC shall:
1. Be currently listed on the parent facility's license in accordance with 902 KAR 20:058; and
2. Comply with the requirements regarding extensions established in 902 KAR 20:058; and
3. Comply with 907 KAR 1:671.

(c) In accordance with 907 KAR 17:015, Section 3(3), an FQHC, FQHC look-alike, RHC, or PCC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program:
(2)(a) To be initially enrolled with the department, an FQHC, FQHC look-alike, or RHC shall:
(a) Enroll in accordance with 907 KAR 1:672; and
(b) Submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or
2. RHC shall:
(a) Enroll in accordance with 907 KAR 1:672; and
(b) Submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General/Certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC; and
(b) To remain enrolled and participating in the Kentucky
Medicaid program an:

1. **FQHC** or **FQHC look-alike** or **RHC** shall:
   a. [4] Comply with the enrollment requirements established in 907 KAR 1:672;
   b. [2] Comply with the participation requirements established in 907 KAR 1:671; and
   c. [4] Annually submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or

2. **RHC** shall:
   a. Comply with the enrollment requirements established in 907 KAR 1:672;
   b. Comply with the participation requirements established in 907 KAR 1:671; and
   c. Annually submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General/certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC to the department;

(c) The requirements established in paragraphs (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.

(3)(a) An FQHC or **FQHC look-alike**, or **PCC** that operates multiple satellite facilities shall:

1. [4] List each satellite facility on the parent facility’s license in accordance with 902 KAR 20:058; and

(b) A **PCC** that operates multiple satellite facilities shall list each satellite facility on the parent facility’s license in accordance with 902 KAR 20:058.

(4) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.

(5) A participating FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC; FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike; RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC; or PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC.

(6) An FQHC, FQHC look-alike, RHC, or PCC performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, or RHC for a Visit by a Recipient Who is not an Enrollee and that is Covered by the Department. (1) Except as established in Section 5 or Section 9 of this administrative regulation, for a visit by a recipient who is not an enrollee and that is covered by the department, the department shall reimburse:

(a) An FQHC, FQHC look-alike, or RHC a final PPS rate an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(bb)[1396a(aa)]; or

(b) A satellite facility of an FQHC or FQHC look-alike a final PPS rate an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(bb)[1396a(aa)].

2. All costs, relative to outpatient drugs or pharmacy services shall be excluded from the PPS rate an all-inclusive encounter rate per patient visit referenced in subsection (1) of this section.

3. The department shall calculate a final PPS rate for a new FQHC, FQHC look-alike, or RHC in accordance with Section 4 of this administrative regulation.

4. The department shall adjust a final PPS rate per visit:

(a) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, or RHC services on July 1 of each year; and

(b) In accordance with Section 10[8] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, or RHC that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services; and

(c) If necessary as a result of a desk review or audit.

5. A final PPS rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4. Establishment of a Final PPS Rate for a New FQHC, FQHC look-alike, or RHC. (1)(a) The department shall establish a final PPS rate to reimburse a new FQHC, FQHC look-alike, or RHC 100 percent of its reasonable cost of providing Medicaid covered services utilizing information from during the FQHC’s, FQHC look-alike’s, or RHC’s base year upon completion of a comprehensive desk review or audit of an FQHC’s, FQHC look-alike’s, or RHC’s Universal Cost Report.

(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, or RHC an interim PPS rate, the interim and subsequent final PPS rate established for an FQHC, FQHC look-alike, or RHC shall:

1. Be prospective; and

2. Not settled to cost.

(2)(a) The department shall determine the reasonable costs of an FQHC, FQHC look-alike, or RHC based on the:

(a) Universal Cost Report;

1. Submitted by the FQHC, FQHC look-alike, or RHC to the department and prepared by the FQHC, FQHC look-alike, or RHC in accordance with the Universal Cost Report Instructions; and

2. That which contains twelve (12) full months of operating data for the designated base first full fiscal year of operations that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation.

(b) Department’s review of the Universal Cost Report referenced in paragraph (a) of this subsection; and

(c) Costs and visits as adjusted by the department for full-time operation for a facility that is not in operation at least forty (40) hours per week most recently submitted to the department by the FQHC, FQHC look-alike, or RHC.

The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection.

(3)(a) Until an FQHC, FQHC look-alike, or RHC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility’s base year, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim rate equal to the all-inclusive per visit rate established for the FQHC, FQHC look-alike, or RHC by Medicaid.

(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC’s, FQHC look-alike’s, or RHC’s interim period.

1. The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the established rate of the final rate.

2. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.

(4)(a) An FQHC, FQHC look-alike, or RHC shall submit a Universal Cost Report to the department by the end of the fifth month following the end of the FQHC’s, FQHC look-alike’s, or RHC’s designated base first full fiscal year that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation.

1. Upon request and documentation by an FQHC, FQHC look-alike, or RHC that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services; and

(c) If necessary as a result of a desk review or audit.

(d) The department shall adjust a final PPS rate per visit:

(a) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, or RHC services on July 1 of each year; and

(b) In accordance with Section 10[8] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, or RHC that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services; and

(c) If necessary as a result of a desk review or audit.
Section 5. Interim Reimbursement for a New FQHC, FQHC Look-alike, or RHC. (1)(a) Until a final PPS rate is established for an FQHC, FQHC look-alike, or RHC, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim PPS rate based on the average final PPS rates of entities with similar caseloads.

(b) To identify an entity with a similar caseload, the department shall consider:

1. Entity type (FQHC, FQHC look-alike, or RHC):
   a. Managed care organization region;
   b. Specialty services, obstetrical services, or hospital-based entities, if applicable.

2. Managed care organization region;
   a. Operating hours per day, days per week, and weeks per year; and
   b. Specialty services, obstetrical services, or hospital-based entities, if applicable.

3. If no entity with a similar caseload exists, the department shall establish an interim PPS rate using cost reporting methods.

After the department establishes a final PPS rate for an FQHC, FQHC look-alike, or RHC, the department shall retroactively adjust reimbursement to the FQHC, FQHC look-alike, or RHC that was made on an interim basis to comport with the final PPS rate.

4. An FQHC, FQHC look-alike, or RHC, upon enrolling with the Medicaid Program, shall submit in writing to the department a statement stating the FQHC’s, FQHC look-alike’s, or RHC’s maximum hours per day, days per week, and weeks per year of operation.

Section 6. Reimbursement for Services or Drugs Provided to an Enrollee by a PCC That Is Not an FQHC, FQHC Look-alike, or RHC and that Are Covered by an MCO. (1) For a service or drug provided to an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC and that is covered by an MCO, the PCC’s reimbursement shall be the reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

2. The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 7. Reimbursement for Services or Drugs Provided to a Recipient by a PCC That Is Not an FQHC, FQHC Look-alike, or RHC and that Are Covered by the Department. (1)(a) For a service or drug provided to a recipient that is not an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the department shall reimburse the rate or reimbursement established for the service or drug on the current Kentucky-specific Medicare Physician Fee Schedule.

(b) Except as provided in subparagraph 3. of this paragraph, if no rate or reimbursement exists on the Kentucky-specific Medicare Physician Fee Schedule for a service or drug, the department shall reimburse the rate or reimbursement established for the service or drug pursuant to the applicable administrative regulation established in Title 907 KAR.

2. For example, if no reimbursement exists on the current Kentucky-specific Medicare Physician Fee Schedule for:
   a. Dental services, the department shall reimburse for the dental service pursuant to 907 KAR 3:010.
   b. Given physician’s service, the department shall reimburse for the service pursuant to 907 KAR 3:010.
   c. The department shall reimburse a rate equal to seventy-five (75) percent of the rate it pays a physician pursuant to 907 KAR 3:010 for a physician’s service that:
      a. Does not exist on the current Kentucky-specific Medicare Physician Fee Schedule; and
      b. Is provided by an APRN or physician assistant.

(2) The reimbursement referenced in subsection (1) of this section shall not exceed the federal upper payment limit determined in accordance with 42 C.F.R. 447.321.

(3)(a) The coverage provisions and requirements established in 907 KAR 3:009(1054) apply to a service or drug provided by a PCC.

(b) If a Medicare coverage provision or requirement exists regarding a given service or drug that contradicts a provision or
requirement established in 907 KAR 3:005(1:054), the provision or requirement established in 907 KAR 3:005(1:054) shall supersede the Medicare provision or requirement.

Section 8[2] Supplemental Reimbursement for FQHC Visits, FQHC Look-Alike Visits, and RHC Visits. If a managed care organization’s reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive pursuant to Sections 3[and] 4, 5, or 9 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

1. Equals the difference between what the managed care organization reimbursed and what the reimbursement would have been if it had been made in accordance with Sections 3[and] 4, 5, or 9 of this administrative regulation;
2. Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and
3. Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with:
   a. 42 C.F.R. 447.303[a] and (b) 42 C.F.R. 447.321.

Section 9, Alternative Payment Methodology for an FQHC, FQHC Look-alike, or RHC.

(1) If the department does not receive the documentation listed in paragraph (b) of this subsection, the department shall notify the FQHC, FQHC look-alike, or RHC in writing of the requested effective date of a change in scope.

(b) An adjustment to a final PPS rate resulting from a change in scope that occurred after an FQHC’s, FQHC look-alike’s, or RHC’s base year shall be[ retroactively] effective to the date that the FQHC, FQHC look-alike, or RHC applied for the change in scope occurred.

(c) A revised PPS rate shall be calculated in accordance with the MAP 100501.

2. [There shall be no rebasing regarding] A revised PPS rate shall not be rebased.

(2) A change in scope of service shall be restricted to:
   a. Adding or deleting a covered service; or
   b. An increase or decrease in the intensity of a covered service pursuant to subsection (5) of this section; or
   c. A statutory or regulatory change that materially impacts the costs or visits of an FQHC, FQHC look-alike, or RHC.

(3) The following items individually shall not constitute a change in scope:
   a. A general increase or decrease in the costs of existing services;
   b. A reduction or expansion of office hours per day, days per week, or weeks per year;
   c. An addition of a new site that provides the same Medicaid covered services;
   d. A wage increase;
   e. A renovation or other capital expenditure;
   f. A change in ownership; or
   g. An addition or deletion of a service provided by a non-licensed professional or specialist.

(4) [a] An addition of a covered service shall be restricted to the addition of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.

(b) The deletion of a covered service shall be restricted to the deletion of a licensed professional staff member who can perform a Medicaid covered service that was being performed within the FQHC, FQHC look-alike, or RHC by the licensed professional staff member.

(5) A change in intensity shall:
   a. Include a material change;
   b. Increase or decrease the existing final PPS rate by at least five (5) percent; and
   c. Last at least twelve (12) months.

(6) The department shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits at an FQHC, FQHC look-alike, or RHC if:
   a. A government entity imposes a mandatory minimum wage increase and the increase was:
      1. Not included in the calculation of the final PPS rate; or
      2. Subsequently included in the MEI applied yearly;
   b. A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class.

2. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.

(7) A requested change in scope shall:
   a. Increase or decrease the existing final PPS rate by at least five (5) percent; and
   b. Last at least twelve (12) months; and
   c. Be submitted to the department in writing.

(b) An FQHC, FQHC look-alike, or RHC that requests a change in scope shall submit for a change in scope [projected] that is effective during a base year for determining an FQHC’s, FQHC look-alike’s, or RHC’s final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.

(c) The following documents shall be submitted to the department within six (6) months of the requested effective date of a change in scope:
   1. [a] A narrative describing the change in scope;
   2. [b] A projected [Universal] Cost Report containing twelve (12) months of projected cost report data for the interim PPS rate change;
   3. [c] A completed MAP 100501, Prospective Payment System Rate Adjustment, completed according to the Instructions for Completing the MAP 100501 Form; and
   4. [d] A signed letter requesting the change in scope.
(b) If the department does not receive the documentation required regarding a change in scope within six (6) months after the requested effective date of a change in scope, the change in scope shall be denied.

[1] [a] The department shall:
   [1] [a] Review the documentation listed in this subsection[9];
   [1] [b] Notify the FQHC, FQHC look-alike, or RHC in writing of the approval or denial of the request for change in scope within ninety (90) business days from the date the department received the request; or
   [1] [c] Need for additional documentation from the FQHC, FQHC look-alike, or RHC to establish an interim PPS rate associated with the change in scope.

[2] [a] If the department requests additional documentation to calculate the interim PPS rate for a change in scope, the FQHC,
FQHC look-alike, or RHC shall:

1. [ ] Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

2. [ ] Request an extension beyond thirty (30) days to provide the additional documentation.

[a.(4)] The department shall grant no more than one (1) extension.

[b.(2)] An extension shall not exceed thirty (30) days.

4. If the department approves the request for a change in scope and receives all of the necessary documentation from an FQHC, FQHC look-alike, or RHC within the timelines established in this section, the department shall establish an interim PPS rate for the FQHC, FQHC look-alike, or RHC based on the projected costs contained in the completed MAP 100501, Prospective Payment System Rate Adjustment [Universal Cost Report] referenced in paragraph (a)(2) of this subsection.

5. (a) To establish a PPS final rate resulting from a change in scope, the department shall use a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report submitted by the FQHC, FQHC look-alike, or RHC to the department that contains twelve (12) months of cost data for the first full fiscal year end after [beginning with] the effective date of the change in scope.

(b) Within six (6) months of the end of the twelve (12) month cost data period referenced in paragraph (a) of this subsection, the FQHC, FQHC look-alike, or RHC shall submit to the department the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report containing cost data corresponding to the twelve (12) month cost data for the first full fiscal year end after the effective date of [period associated with] the change in scope.

(c) The department shall:

1. [ ] Review the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report; and

2. [ ] Notify the FQHC, FQHC look-alike, or RHC of the necessity of the FQHC, FQHC look-alike, or RHC to submit additional documentation if necessary.

[d] If additional documentation is necessary to establish a PPS final rate, the FQHC, FQHC look-alike, or RHC shall:

[a] Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

[e] If the department requests additional documentation from an FQHC, FQHC look-alike, or RHC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC the FQHC’s, FQHC look-alike’s, or RHC’s PPS final rate that was in effect prior to the FQHC, FQHC look-alike’s, or RHC’s request for a change in scope until:

a. The additional documentation has been received by the department; and

b. The department establishes a new final PPS rate associated with the change in scope.

2. If an FQHC, FQHC look-alike, or RHC does not submit a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report to the department in accordance with paragraph (b) of this subsection, the department shall:

[a] Not issue a new PPS final rate associated with the change in scope; and

[b] Revert to paying the FQHC[FQHC], FQHC look-alike, or RHC the FQHC’s, FQHC look-alike’s, or RHC’s PPS final rate that was in effect prior to the FQHC, FQHC look-alike’s, or RHC requesting a change in scope.

[f] If any service included in a change in scope is a service that can be identified on a paid claims listing, the department shall review the FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing for the period of time corresponding to the FQHC’s, FQHC look-alike’s, or RHC’s cost report period of time referenced in paragraphs (a) and (b) of this subsection.

2. If an FQHC, FQHC look-alike, or RHC has submitted all necessary information to the department, within forty-five (45) days of reviewing the FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing, the department shall:

[a] Establish a final PPS rate, resulting from the change in scope, for the FQHC, FQHC look-alike, or RHC; and

b. Notify the FQHC, FQHC look-alike, or RHC in writing of the FQHC’s, FQHC look-alike’s, or RHC’s:

[i] Final PPS rate; and

[ii] Appeal rights regarding the PPS final rate.

3. To allow adequate time for claim adjudication, a paid claims listing shall not be requested until at least fourteen (14) months after the end of the FQHC’s, FQHC look-alike’s, or RHC’s cost report period associated with the change in scope.

[b] If no service included in a change in scope can be identified on a paid claims listing, and the department has received a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report referenced in paragraphs (a) and (b) of this subsection, and no additional documentation is needed from the FQHC, FQHC look-alike, or RHC, the department shall:

[a] Not review a paid claims listing in establishing a new PPS final rate for an FQHC, FQHC look-alike, or RHC; and

[b] Establish a new PPS final rate for an FQHC, FQHC look-alike, or RHC resulting from the change in scope; and

[c] The limit established in paragraph (a) of this subsection shall:

1. [ ] Apply to an FQHC, FQHC look-alike, or RHC; and

2. [ ] Not apply to a PCC that is not an FQHC, FQHC look-alike, or RHC.

2. (a) Except as established in paragraph (b) of this subsection, a vaccine available without charge to an FQHC, FQHC look-alike, or RHC, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider or multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

[b] The limit established in paragraph (a) of this subsection shall:

1. [ ] Apply to an FQHC, FQHC look-alike, or RHC; and

2. [ ] Not apply to a PCC that is not an FQHC, FQHC look-alike, or RHC.

Section 11. Limitations and Exclusions. (1) (a) Except for a case in which a recipient or enrollee, subsequent to the first encounter at an FQHC, FQHC look-alike, or RHC, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider or multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(c) Except as established in paragraph (b) of this subsection, a vaccine available without charge to an FQHC, FQHC look-alike, RHC, or PCC through the department’s Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

(b) Adult flu vaccine costs shall be allowed as Medicaid costs reported on a Universal Cost Report.

(3) The department shall not reimburse for services provided by an FQHC, FQHC look-alike, PCC, or RHC to a recipient in a hospital unless the FQHC, FQHC look-alike, PCC, or RHC has previously, any time prior to the hospital admission, provided a service to the recipient at the FQHC’s, FQHC look-alike’s, PCC’s, or RHC’s location.

Section 12. Out-of-State Providers. (1) Except as established in subsection (2) of this section, reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be based on the rate on file with the FQHC’s, FQHC look-alike’s, or RHC’s state Medicaid agency.

(b) If an out-of-state FQHC’s, FQHC look-alike’s, or RHC’s reimbursement is an APM, the department’s reimbursement to the out-of-state FQHC, FQHC look-alike, or RHC shall:

[a] Not be the APM the FQHC, FQHC look-alike, or RHC receives in its state; and

[b] Be the final PPS rate that the FQHC, FQHC look-alike, or RHC would receive in its state if it were not receiving an APM.
Section 13. [14] 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) A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services’ approval for the reimbursement (Service).

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 14. 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)(a) 907 KAR 1:054; or

(b) 907 KAR 1:082; and

(2) This administrative regulation.


(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An FQHC, FQHC look-alike, PCC, or RHC may appeal a department decision as to the application of this administrative regulation as it impacts the facility’s reimbursement rate in accordance with 907 KAR 1:671.

Section 16. [13] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “MAP 100501, Prospective Payment System Rate Adjustment”, February 2013 edition,

(b) “Instructions for Completing the MAP 100501 Form”, February 2013 edition,

(c) “Universal Cost Report”, May 2015,


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

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, September 8, 2015)

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


STATUTORY AUTHORITY: KRS 13B.170[Chapter 13B], 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include: [4] the issuance of an expedited order; 2. Procedures for written exceptions; and

3. The issuance of a final order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet’s suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household’s right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) The cabinet shall use:

(a) The FS-80, 4/15, and the FS-80, Supplement A, 9/14; or

(b) On or after December 28, 2015, the FS-80, 12/15, and the FS-80, Supplement A, 12/15.

(5) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual;

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050;[To the addressee only]; and

(c) With a return receipt requested.

(6) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(2)(i)(ii).

(7) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the
Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14(12).

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) A household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual;

(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable;

(c) Determine an intentional program violation has been committed based on the evidence presented;

(d) Conduct a new hearing upon an order of finding if the: (a) Housing unit was not represented at the hearing;

(e) Individual was determined to have committed an IPV; and

(f) Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); by showing nonreceipt of the notice of hearing; and

(d) Appeal Board for Public Assistance is not considering the same matter.

(4) Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; and

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstatement the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits.

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing; or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(2), the cabinet shall:

(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual;

(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable;

(c) Determined an intentional program violation has been committed based on the evidence presented;

(d) Conduct a new hearing upon an order of finding if the: (a) Housing unit was not represented at the hearing;

(e) Individual was determined to have committed an IPV; and

(f) Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); by showing nonreceipt of the notice of hearing; and

(d) Appeal Board for Public Assistance is not considering the same matter.

(4) Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8(ii)): 2. Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The “Correspondence from the Office of Attorney General dated April 5, 2012”, April 5, 2012;

(b) “FS-80, Notice of SNAP Suspected Intentional Program Violation”, 4/15(9.14);

(c) “FS-80, Notice of SNAP Suspected Intentional Program Violation”, 12/15;

(d) “FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing”, 9/14;

(e) “FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing”, 12/15; and


(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 921 KAR 3:060.

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, September 8, 2015)

921 KAR 3:070. Fair hearings.

RELATES TO: KRS [Chapter 13B, 45.237, 205.231, 7 C.F.R. 273.15/273.16]

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out [Chapter 13B, as added] the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:
(a) On the part of the cabinet; and
(b) That affects the SNAP benefits of the household.

(2) A fair hearing shall be conducted:
(a) On a state level;
(b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and
(c) Unless the local office administering the benefits of the appellant or an alternate site, if the appellant:
   1. Is unable to travel to the local office; and
   2. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation, and the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) When a participant applies, he or she (At the time of application, a participant) shall receive written notification of the:
(a) Right to a hearing;
(b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and
(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:
   1. Legal counsel;
   2. A relative;
   3. A friend; or
   4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:
(a) An action is taken that affects the benefits of the participant; or
(b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:
   (a) Help an appellant with a hearing request; and
   (b) Make available, without charge, the materials necessary for an appellant to:
      1. Determine whether a hearing may be requested; or
      2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:
   (a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;
   (b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
   (c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(1), unless an appellant’s request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:
   (a) Waive the right to certified mail delivery under KRS 13B.050; and
   (b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:
   (a) Acknowledge the request in accordance with Section 5 of
this administrative regulation;
(b) Conduct a hearing; and
(c) Issue a final order.
(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:
(a) Within ten (10) days of the final order; or
(b) With the next issuance following receipt of the final order.
(3) If an appellant requests a postponement of a hearing, the:
(a) Hearing shall be postponed;
(b) Postponement shall not exceed thirty (30) days from the request for the postponement; and
(c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:
(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;
(b) Appellant submits a written request to withdraw the hearing request; or
(c) Appellant or representative fails to appear for the scheduled hearing without:
1. Notifying the cabinet prior to the hearing; or
2. Establishing good cause for failure to appear as defined in subsection (2) of this section, within ten (10) days.
(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:
(a) Was away from home during the entire filing period;
(b) Is unable to read or comprehend the notice;
(c) Moved, resulting in a delay in receiving or failure to receive the notice;
(d) Or other household member had a serious illness;
(e) Was not at fault for the delay, as determined by the hearing officer; or
(f) Did not receive the notice.
(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:
(a) Issues of the hearings are based on the same or related circumstances; and
(b) Appellant receives prior notice of the hearings being combined.
(2) If a fair hearing and an administrative disqualification hearing are combined the:
(a) Timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed; and
(b) Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3 may be waived if requested by the appellant.
(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:
(a) The amount of the claim; and
(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:
(a) Individual issues of fact are not disputed; and
(b) The issues relate to the same state or federal:
1. Laws;
2. Administrative regulations; or
3. Policy.
(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:
(a) Is optional; and
(b) Shall not delay or replace the fair hearing process.
(3) A fair hearing shall be dismissed if:
(a) An agency conference leads to an informal resolution of the dispute; and
(b) The appellant makes a written withdrawal of the request for a hearing.
(4) An agency conference shall be attended by the:
(a) Appellant's caseworker;
(b) Local office supervisor; and
(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:
(a) Examine:
1. The contents of the case file; and
2. All documents and records to be used at the hearing;
(b) Present the case or have the case presented by a representative or legal counsel;
(c) Bring witnesses, friends, or relatives;
(d) Present arguments without undue interference;
(e) Submit evidence to establish the pertinent facts and circumstances of the case; and
(f) 1. Question or refute testimony or evidence; and
2. Cross-examine an adverse witness.
(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.
(3) Confidential information, such as the following, shall be protected from release:
(a) Names of individuals who have disclosed information about the appellant's household; and
(b) The nature or status of pending criminal prosecutions.
(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:
(a) Confidential information as specified in subsection (3) of this section;
(b) Documents, testimony, or records irrelevant to the hearing; and
(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:
(a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and
(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).
(2) When conducting a hearing, a hearing officer shall:
(a) Have the authority set forth in KRS 13B.080;
(b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation from a source:
1. Not associated with the original action; and
2. Agreeable to both the appellant and the cabinet if:
   a. The hearing involves medical issues; and
   b. The hearing officer considers it necessary;
(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 13 and
(d) Issue an order:
1. In accordance with KRS 13B.110; and
2. As specified in Section 14 of this administrative regulation; and
   (e) Issue a final order under Section 9 of this administrative regulation.

Section 14. Hearing Officer's Order. (1) After the hearing has concluded, the hearing officer shall draft an order which:
(a) Summarizes the facts of the case;
(b) Specifies the:
1. Reasons for the recommended order; and
2. Address to which a party in the hearing may send an exception to the recommended order; and
(c) Identifies the:
1. Findings of fact;
2. Conclusions of law;
3. Supporting evidence;[and]
4. Applicable state and federal regulations; and
5. Address the parties' arguments.

(2) A copy of the recommended order shall be sent simultaneously to the:
(a) Appellant or representative; and
(b) Department for Community Based Services' Division of Family Support; and
(c) Appeal Board for Public Assistance established in accordance with KRS 205.231.

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.

(4) If necessary, benefits of the appellant shall be adjusted:
(a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and
(b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's recommended order, the party may file a written exception with the Appeal Board for Public Assistance established in accordance with KRS 205.231.

(2) A written exception or rebuttal shall:
(a) Be filed within fifteen (15) days of the date the hearing officer's recommended order was mailed;
(b) Be based on facts and evidence presented at the hearing;
(c) Not refer to evidence that was not introduced at the hearing; and
(d) Be sent to each other party involved in the hearing.

Section 16. Appeal Board Review. (1) The Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the hearing officer's recommended order to the:
(a) Parties to the hearing; and
(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:
(a) Offer the opportunity to:
1. File a brief; or
2. Request permission to submit new or additional evidence; and
(b) State the tentative date on which:
1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and
2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:
(a) The records of the hearing; and
(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:
(a) Submit written arguments; and
(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 17. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (q).

(2) If necessary, benefits of the appellant shall be adjusted:
(a) Based on the decision of the Appeal Board for Public Assistance; and
(b) Within ten (10) days of the Appeal Board for Public Assistance's decision.

(3) A party aggrieved by the Appeal Board for Public Assistance's decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and
(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014 is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 27, 2015
FILED WITH LRC: April 30, 2015 at 1 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street S W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.
201 KAR 11:170. Real estate [Private] school and pre-license course approval.

RELATES TO: KRS 324.010(7), 324.046(1), (2), 324.085
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282

The Kentucky Real Estate Commission shall conduct an investigation to determine if an applicant has met the qualifications required to become an approved or accredited real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.

Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:
(a) Completed Provider Application – Form E101 [for an Approved Real Estate School] including the information required concerning curriculum, instructors, required textbooks, educational materials, and policies of the school;
(b) Copy of the [license]Certificate of Approval] from the Kentucky Commission on [State Board for] Proprietary Education [or Kentucky Department of Education], if applicable;
(c) Sample schedule to outline how a course will be presented;
(d) Completed detailed Course Outline – Form E105 broken into four (4) hour increments to include teaching methods, learning objectives for the course, auxiliary aids, and materials for each course, which shall include:
1. [A Real Estate] Instructor Application – Form E100 and any additional documents required to explain a response on the application for each instructor who will teach this course, as required by 201 KAR 11:175; and
2. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;
(e) Copy of a school brochure or information sheet promoting the school;
(f) Copy of legal documentation required to support an answer, if applicable;
(g) A sample copy of an official transcript that will be issued by the school;
(h) A copy of a contract or agreement signed by the student which outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements; and
(i) Other documents as outlined in Section 2 of this administrative regulation.

(2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.043. Failure to do so may result in suspension of an approved school’s certification until the information is included in the application.

(3) An approved real estate school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.

(4) A renewal application shall be submitted by October 1 of each even numbered year. The approval shall be for a two (2) year period, beginning November 1.

Section 2. (1) The curriculum for a pre-license course at an approved real estate school shall:
(a) Include a minimum of:
1. Three (3) academic hours per course; or
2. Fifteen (15) hours for a course related to the appraisal of property;
(b) Be conducted for a maximum of no more than nine (9) [seven (7) academic] hours during a twenty-four (24) hour period;
(c) Consist of a course containing the topics listed in the Pre-license Prescribed Topics – Form E112 Topics Prescribed by the Real Estate Commission.
2. A real estate course shall be one that is designated specifically as a real estate course by an approved or accredited real estate school that offers the course.
3. The academic content for the course shall specifically focus on real estate.
4. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing.
5. A candidate shall not submit completion of the same course or essentially the same course twice for license credit;
(d) Include a closed-book monitored final examination of at least:
   a. Fifty (50) [Seventy-five (75)] multiple choice questions for a three (3) hour academic [hour] course or
   b. 100 multiple choice questions for a six (6) hour academic [hour] course.
6. The passing score shall be seventy-five (75) percent in order to pass the course.
7. Examination questions shall cover all aspects of material covered in the course, including applicable license laws and administrative regulations.
8. Two (2) retakes [One (1) retake] of the examination shall be permitted; and
   (e) Include in all real estate pre-license [prelicense] courses, a practicum or project applicable to the topic, that shall be completed with a passing score and averaged with the final examination and other components or assignments required in the course, as part of the student’s final grade.
9. (2) The application for course approval shall include a copy of the final examination and answer key, an explanation and copies of the project or practicum that shall be required of students, when that assignment shall be due, and how the final grade for the course shall be calculated;
   (3) All primary and secondary providers offering online pre-license [prelicense] or other distance education courses shall be approved in accordance with the provisions set forth in 201 KAR 11:240 if the Association of Real Estate License Officials (ARELO) or the International Distance Education Certification Center (IDeCC) accept the format and delivery systems of the program.
   (4) The commission shall review the content to ensure that it meets the requirements outlined in this administrative regulation and provides an approval or denial of the course for academic credit.

Section 3. Each real estate pre-license [prelicense] course completed at an out-of-state accredited institution, for which credit may be granted under this section, shall be approved or rejected under the following procedure:

1. A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the commission by the applicant;
2. The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the

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commission’s regular monthly meeting:
(3) The commission education director shall record:
(a) The name of the course;
(b) Whether approval was granted or rejected; and
(c) The date of approval or rejection.
(4) If a course has been previously approved by the commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval;
(5) In determining whether a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:
(a) The table of contents from text used in the course;
(b) The course syllabus;
(c) Course description from the school catalog; or
(d) Other summary of the course.
(6) The commission’s education director shall notify an applicant if a course is rejected for credit under this section;
(7)(a) If an applicant disagrees with the education director’s decision under this section, he or she shall, within ten (10) days from the date of the education director’s notification of rejection, file with the commission a written request for a commission review of its education director’s decision.
(b) The request shall specifically indicate the applicant’s disagreement.
(c) Failure to indicate disagreement within the ten (10) day period shall constitute waiver by the applicant and the education director’s decision shall become final.
(8)(a) In addition to notifying the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited.
(b) The commission education director shall forward this summary to the commission along with his or her response to the commission for a final decision at the commission’s regular monthly meeting.
(c) Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director’s decision shall become final at that point;
(9)(a) If the applicant indicates disagreement with the education director’s decision within ten (10) days of notification and provides a written summary detailing the disagreement within ten (10) days of notification, the commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section.
(b) The commission shall notify the applicant of its decision in writing.

Section 4. An approved real estate school shall not:
(1) Advertise in conjunction with the business of a broker or a brokerage firm; or
(2) Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 5. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.
(a) A permanent record shall include each student’s record of courses completed or attempted, academic hours awarded, and final grades.
(b) A certificate of completion shall be:
1. Included in the permanent records of each student; and
2. Mailed to each student upon completion of a course.
(2) Records shall:
(a) Be maintained for three (3) years; and
(b) Include student attendance records, final grade, and test scores.
(3) An approved real estate school shall notify the commission, in writing, within five (5) days of the beginning of a pre-license course. Notice shall include the name of the course, class location, and scheduled dates and times the class will be offered.

(4) Schools and instructors shall take appropriate steps to maintain the confidentiality of the final examinations at all times. These steps shall include:
(a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor;
(b) Prohibiting students from retaining copies of the final examination and answer sheets; and
(c) Monitoring students at all times when examinations are being conducted.

Section 6. (1) An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school or to evaluate the performance of the instructor.
(2) Monitoring may include a periodic mailing by the commission to students seeking an evaluation of his or her pre-license course and instructor.

Section 7. (1) Private school approval may be withdrawn if the commission determines that:
[a] Information contained on the application or renewal is inaccurate or misleading.
[b] The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course;
[c] The school is not certified by the Kentucky Commission for Proprietary Education.
(2) If the commission has notice that a school’s approval may be subject to withdrawal for the reasons set forth in subsection (1) of this section, the commission shall:
(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor;
(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of notice of intent to withdraw approval; and
(c) Review the issues and the school’s response, and the commission may withdraw approval of the school.

Section 8. An effort made directly or indirectly by a school, official, or employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Instructor Application - Form E101[Application for Certification of Approved Real Estate School]", 05/15/09, edition, Kentucky Real Estate Commission;
(b) "Provider Application - Form E101[Course Outline]", 05/15/09, edition, Kentucky Real Estate Commission;
(c) "Course Outline – Form E105[Certificate of Completion]", 05/15/09, edition, Kentucky Real Estate Commission; and
(d) "Pre-license Prescribed Topics – Form E112[Topics Prescribed by the Real Estate Commission]", 05/15/2002, edition, Kentucky Real Estate Commission; and
(e) "Real Estate Instructor Application", 09/07, edition, Kentucky Real Estate Commission.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB ROBERTS, Chairperson
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
CONTACT PERSON: Rhonda K. Richardson, General
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rhonda K. Richardson  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for an approved real estate school and requirements and procedures for course approval.  
(b) The necessity of this administrative regulation: KRS 324.010(7) and KRS 324.281(8) require that the commission promulgate regulations setting forth the review process and procedure for approval of real estate schools and courses.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements and application procedures for approval of real estate school applications and requirements and procedures for approval of courses.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a review process and procedure for approval of real estate schools and courses.  
(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 was amended after public hearing and comments to 1 allow a maximum of nine (9) educational credit hours to be taken within a 24 hour period; 2) delete the word "academic" from 201 KAR 11:170 Section 2(1)(b), as use of this term was incorrect (i.e. Seven (7) academic hours would equate to 112 classroom hours – post-license educational requirement is 48 hours); and 3) to amend 201 KAR 11:170, Section 2(1)(d)(4) to allow two (2) retakes of a final examination.  
(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to make this regulation consistent with similar provisions in 201 KAR 11:235 and 201 KAR 11:240.  
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute mandates the promulgation of administrative regulation to establish procedures for implementing the statute.  
(d) How the amendment will assist in the effective administration of the statutes: Amendment of the regulation allows for consistency with 201 KAR 11:235 and 320 KAR 11:240.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Forty-five (45) Proprietary schools may be affected by this administrative regulation;  
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:  
(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: Impacted entities will be required to follow the processes set forth in this regulation and to utilize the required forms.  
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Education providers are currently charged $15.00 per course approval application. There will be no additional cost to the providers in completing the new forms.  
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By utilizing the required forms the proprietary school approval process will be not be delayed.  
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:  
(a) Initial: This administrative regulation substitutes the existing form for a new form. This regulation will be implemented utilizing existing staff and no additional cost will be incurred.  
(b) On a continuing basis: Administrative regulation will be implemented utilizing existing staff.  
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing agency budget.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees funding will be necessary.  
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly increase any fees. The fee schedule for this administrative regulation is set forth in KRS 324.287.  
(9) TIERING: Is tiering applied? Tiering has not been applied as there is no disproportionate impact on any regulated entity.  

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 Real Estate Commission.  
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.010(7) and KRS 324.281(8).  
(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 in effect. This administrative regulation will be implemented utilizing existing staff and there will be no additional cost will be incurred.  
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $7,200.  
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately $7,200.  
(c) How much will it cost to administer this program for the first year? Administration will be carried out by existing staff and there will be no additional costs.  
(d) How much will it cost to administer this program for subsequent years? None. Administration will be carried out by existing staff.  
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 Commission  
(Amended After Comments)  
201 KAR 11:232. Continuing education provider requirements.  

RELATES TO: KRS 324.010(7), (8), 324.065(5), 324.085(1), (2), 324.090, 324.160(1)(c), (4)(u), 324.281(7)  
STATUTORY AUTHORITY: KRS 324.085(1), (4), 324.160(1)(c), (4)(u), 324.281(5), (7), (8), 324.282  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal, and requires that three (3) of the six (6) hours pertain to the study of real estate law. KRS 324.085(1) also requires that a licensee that receives an initial sales associate license must complete forty-eight (48) classroom or online hours of  

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commission approved post-license education. This administrative regulation establishes the provider, course, and instructor requirements relating to real estate education.

Section 1. Continuing Education Course Criteria. (1) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual instruction.

(2) To receive approval, courses shall:
(a) Be in hourly increments from one (1) to six (6) hours;
(b) Be real estate specific; and
(c) Consist of topics that shall:
1. Increase the student’s knowledge of real estate laws and the brokerage business; and
2. Serve the public.

(3) A course that is motivational or considered to be personal development in nature shall not be approved.

(4) All course approvals shall expire on December 31 of each calendar year.

(5) All primary or secondary providers wishing to offer online or other distance education courses shall be approved in accordance with the provisions of 201 KAR 11:240. The commission shall review and approve the content to ensure that it meets the requirements outlined in 201 KAR 11:240.

Section 2. Continuing Education Course Provider Requirements. (1) An education course shall be sponsored by:
(a) An accredited institution;
(b) A school that has been given a license from the Kentucky Commission on Proprietary Education;
(c) An appropriate governmental regulatory body; or
(d) An approved real estate school as defined in KRS 324.010(7)(b).

(2) To apply for approval of a continuing education course, a provider shall submit:
(a) A completed Provider Application – Form E101, which shall:
1. Include a Course Outline Form – E105, broken into fifteen (15) minute increments, to include learning objectives for the course, teaching methods, auxiliary aids, materials, and the policies of the provider; and
2. Be signed by the sponsor’s administrator to indicate compliance with applicable law and the requirements of this administrative regulation;
(b) Copy of the license from the Kentucky Commission on Proprietary Education, unless the provider is an accredited college or university, an appropriate government regulatory body, or an approved real estate school as defined in KRS 324.010(7);
(c) Instructor Application – Form E100 for each instructor who will teach the course, as required by 201 KAR 11:175;
(d) Education Course Application – Form E102, along with a processing fee of fifteen (15) dollars; and
(e) Copy of all advertising or brochures advertising the continuing education course.

(3) The course provider shall agree that all instructors shall abide by the Generally Accepted Principles of Education – Form E104 as adopted by the Real Estate Educators Association and the commission as the standard for classroom performance and comply with the KREC Guidelines for Classroom Management – Form E103.

(4) The commission education director shall submit the information to the commission for approval or rejection of the course at its regularly scheduled meeting.

(5) A course and instructor that have been previously approved within the calendar year may be conducted by another provider, upon the submission of an Education Course Application Form – E102 and approval by the commission staff.

(6) A provider shall:
(a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission an Education Schedule – Form E106;
(b) Give to each licensee attending the course an Education Completion Certificate – Form E110;
(c) Within ten (10) days of a continuing education course, submit to the commission:
1. An education attendance roster;
2. Course Evaluation – Form E108 completed by each attendee listed on the roster; and
3. Course Evaluation Transmittal – Form E109;
(d) Permit monitoring of the courses and inspection of the records by the commission; and
(e) Make the course available to all licensed agents, subject only to space limitations.

(7) A provider’s approval to conduct continuing education courses may be withdrawn by the commission for:
(a) A violation of the KREC Guidelines for Classroom Management – Form E103;
(b) Falsification of attendance information submitted to the commission;
(c) Allowing an instructor to solicit business or sell materials to students in the classroom;
(d) Failure to provide the commission the required materials in accordance with this administrative regulation; or
(e) Conducting courses that were not approved prior to being offered.

Section 3. Instructor Requirements. (1) A course instructor shall:
(a) Have adequate education, knowledge, and experience in the topic to be presented;
(b) Have prior teaching experience; and
(c) Be an approved instructor under the requirements established in 201 KAR 11:175.

(2) A licensee who teaches an approved continuing education course shall be entitled to credit on an hour-for-hour basis. To obtain continuing education credit, the instructor’s name shall be added to the education attendance roster for the course. However, the instructor shall not receive credit more than once in a calendar year for teaching a specific course.

(3) A licensee who is a pre-license instructor of an approved course shall receive credit toward his or her continuing education requirements. The instructor’s supervisor shall provide the commission with a written notice requesting teaching credit, to include the instructor’s name, name of course, and dates the course was conducted, and be signed by the approved school or institution’s authorized representative.

Section 4. Records Maintenance. (1) Each continuing education provider shall maintain the following records in a file for three (3) years following the end of each calendar year:
(a) A copy of the roster submitted to the commission of licensees attending the course;
(b) A copy of the Course Evaluation Transmittal – Form E109;
(c) The sign in sheet or registration list used by the provider to track attendance; and
(d) Any other documentation regarding student attendance.

(2) Records containing licensee information shall be destroyed by the provider.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Instructor Application – Form E100", 05/15 edition;
(b) "Provider Application – Form E101", 05/15 edition;
(c) "Education Course Application – Form E102", 05/15 edition;
(d) "KREC Guidelines to Classroom Management – Form E103", 05/15 edition;
(e) "Generally Accepted Principles of Education – Form E104", as adopted by the Real Estate Educators Association and the Kentucky Real Estate Commission, 05/15 edition;
(f) "Course Outline – Form E105", 05/15 edition;
(g) "Education Schedule – Form E106", 05/15 edition;
(h) "Course Evaluation – Form E108", 05/15 edition;
(i) "Course Evaluation Transmittal – Form E109", 05/15 edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB ROBERTS, Chairperson
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the continuing education course provider requirements; sets forth the continuing education course instructor requirements; and sets forth the requirements for record retention by providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements relating to the requirements for real estate education providers, courses, and instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements related to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education credits, course and instructor approval, and provides options for the licensee to informally resolve non-compliance issues with the licensee.

(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 was amended after the public hearing and comment period to correct Form E102, the Education Course Application, to strike the reference to a fee, as the fee no longer applies; and to delete the reference to the timed outline, as this is no longer applicable; and to revise the date on the form to be changed from “Revised 05/2015” to “Revised 09/2015.”

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to make the needed corrections to Form E102.

(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: The amendments make the needed corrections to the form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Education providers, approximately fifty-three (53), will be affected by this regulation; education providers, approximately fifty-three (53), will be 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: Regulated entities will be required to meet the new deadlines, utilize the revised forms to submit the requested applications and documentation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Education providers will be charged a fee of fifteen (15) dollars with their application for course approval.

(c) How the regulation will accrue to the entities identified in question (3): Providers cost for course approval will be reduced; and licensees will meet their annual continuing education requirement.

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

(a) Initially: NONE - Regulation shall be implemented using existing staff.

(b) On a continuing basis: NONE - Regulation shall be implemented using existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing agency budget.

(7) Provide an analysis 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: N/A.

(8) State whether or not this administrative regulation established any fees or indirectly increased any fees: This regulation established a fifteen (15) dollar fee for course approval by the commission.

(9) TIERING: Is tiering applied? Tiering is not applied as there is no disproportionate impact on the different classes of licensees.

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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085(1), (4), 324.160(1)(c), 324.160(4)(u), 324.281(5), (7), (8), 324.282

(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? Revenues are estimated to increase by $7,240 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? Revenues are estimated to increase by $7,240 for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the administration of this regulation shall be carried out by existing staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the administration of this regulation shall be carried out by existing staff.

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 Commission
(Amended After Comments)

201 KAR 11:235. Post-license education requirements.

RELATES TO: KRS 324.010, 324.046, 324.090, 324.160
STATUTORY AUTHORITY: KRS 324.085, 324.281, 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085, 324.281, 324.282 authorize the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.085 authorizes the commission to establish procedures for implementing the requirements for post-license education. This administrative regulation establishes procedures for implementing the requirements for post-license education.
Section 1. Definitions. (1) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a licensed real estate principal broker.

(2) "Initial sales associate license" means the original Kentucky sales associate license issued by the commission.

Section 2. Post-license Education Course Provider Requirements. (1) A post-license education course shall be sponsored by:

(a) An accredited institution;
(b) A school that has been licensed by the Kentucky Commission on Proprietary Education;
(c) An appropriate governmental regulatory body;
(d) An approved real estate school as defined in KRS 324.010(7); or
(e) An approved broker-affiliated training program.

(2) To apply for approval of a post-license education course, a provider shall submit:

(a) A completed Provider Application – Form E101, which shall:
   1. Include a Course Outline – Form E105, broken into fifteen
      (15) minute increments, to include learning objectives for the
      course, teaching methods, auxiliary aids, materials, and the
      policies of the provider; and
   2. Be signed by the sponsor's administrator to indicate
      compliance with applicable law and the requirements of this
      administrative regulation;
(b) A completed Education Course Application – Form E102;
(c) A copy of the license from the Kentucky Commission on
   Proprietary Education, unless the provider is an accredited college
   or university, an appropriate governmental regulatory body, an
   approved real estate school as defined in KRS 324.010(b), or an
   approved broker-affiliated training program;
(d) A completed Instructor Application – Form E100 for each
   instructor who will teach the course, as required by 201 KAR
   11:175; and
(e) A copy of all advertising or brochures advertising the post-
   license education course.

(3) The course provider shall agree that all instructors shall
   abide by the Generally Accepted Principles of Education – Form
   E104 as adopted by the Real Estate Educators Association and
   the commission as the standard for classroom performance, and
   comply with the KREC Guidelines for Classroom Management –
   Form E103.

(4) The commission education director shall submit the
   information to the commission for approval or rejection of the
   course at its regularly scheduled meeting.

(5) A course and instructor that has been previously approved
   within the calendar year may be sponsored by another provider,
   upon the submission of an Education Course Application – Form
   E102 and approval by the commission staff.

(6) A provider shall:
   (a) At least thirty (30) days prior to the scheduling of a post-
       license education course, submit to the commission an
       Education Schedule – Form E106;
   (b) Give each attendee who completes the course an
       Education Completion Certificate – Form E110;
   (c) Within ten (10) days of conclusion of a post-license
       education course, submit to the commission a completed:
       1. Roster that lists all attendees that completed the course;
       2. Course Evaluation – Form E108 completed by each
          attendee listed on the roster; and
   3. Course Evaluation Transmittal – Form E109;
   (d) Permit unannounced monitoring of the courses and
       inspection of the records by the commission;
   (e) Make the course available to all licensed agents, subject
       only to space limitations.

(7) A provider's approval to conduct post-license education
   courses may be withdrawn by the commission for:
   (a) Violation of the KREC Guidelines for Classroom
       Management – Form E103;
   (b) False or misleading statements on the provider's
       application.

Section 3. Instructor Requirements. (1) A post-license
   education course shall be taught by an instructor approved under
   the requirements established in 201 KAR 11:175 and subject to the
   requirements in 201 KAR 11:460.

(2) A licensee who teaches an approved post-license education
   course shall be entitled to continuing education credit on an
   hour-for-hour basis. To obtain continuing education credit, the
   instructor shall be included on the roster that lists all attendees
   that completed the course that is provided to the commission. However,
   the instructor shall not receive credit more than once in a calendar
   year for each specific course taught.

Section 4. Post-license Education Course Criteria and
   Requirements. (1) One (1) hour of post-license education shall be
   allowed for each fifty (50) minutes of actual instruction.

(2) Post-license education shall consist of thirty (30) hours from
   the courses specified in paragraphs (a) and (b) of this subsection
   and eighteen (18) hours as specified in paragraph (c) of this
   subsection:
   (a) The three (3) hour Commission Licensee Compliance
       course;
   (b) The requirements in each of the following course topics:
       1. Six (6) hours in Agency;
       2. Six (6) hours in Contracts;
       3. Three (3) hours in Finance;
       4. Three (3) hours in Advertising;
       5. Three (3) hours in Risk Management;
       6. Three (3) hours in Fair Housing;
       7. Thirty (30) hours in Technology & Data Security;
   (c) Eighteen (18) hours in elective topics chosen by the
       licensee from the electives listed in the Post-license Topics – Form
       E113.

(3) A licensee shall not receive post-license education credit
   for a duplicate course.

(4) No more than nine (9) hours of post-license education may
   be taken in a twenty-four (24) hour period.

(5) Post-license education courses shall meet the following
   standards:
   (a) Contain topics that are real estate specific, provide
       practical knowledge of the brokerage business, and protect the
       public interest;
   (b) Course objectives and assessments shall be practicum
       based to allow application of knowledge from pre-license education
       to practical real estate brokerage scenarios; and
   (c) A course that is motivational or considered to be personal
       development in nature shall not be approved.

(6) All course approvals shall expire on December 31 of each
   calendar year.

(7) All primary or secondary providers wishing to offer online or
   other distance education courses shall be approved in accordance
   with the provisions set forth in 201 KAR 11:240. The commission
   shall review the content of courses to ensure that it meets the
   requirements outlined in this administrative regulation and in 201
   KAR 11:240.

Section 5. Compliance and delinquency. (1) The time
   requirements established in this administrative regulation may be
   extended by the commission for good cause shown. A licensee's
   request for an extension of time for good cause shown shall be
   submitted to the commission within the two (2) year timeframe set
   forth in KRS 324.085.

(2) If a licensee fails to provide proof of completion of the
   post-license education requirements within the allotted timeframe set forth in KRS
Section 6. Records Maintenance. (1) Each post-license education provider shall maintain the following records in a file for three (3) years following the end of each calendar year:
   (a) A copy of the roster submitted to the commission of licensees attending the course;
   (b) A copy of the Course Evaluation Transmittal – Form E109;
   (c) The sign-in sheet or registration list used by the provider to track attendance; and
   (d) Any other documentation regarding student attendance.

(2) Records containing licensee information shall be destroyed by the provider.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Instructor Application – Form E100", 05/15 edition;
   (b) "Provider Application – Form E101", 05/15 edition;
   (c) "Education Course Application – Form E102", 09/15[05/15] edition;
   (d) "KREC Guidelines for Classroom Management – Form E103", 05/15 edition;
   (e) "Generally Accepted Principles of Education – Form E104", as adopted by the Real Estate Educators Association, 05/15 edition;
   (f) "Course Outline – Form E105", 05/15 edition;
   (g) "Education Schedule – Form E106", 05/15 edition;
   (h) "Course Evaluation – Form E108", 05/15 edition;
   (i) "Course Evaluation Transmittal – Form E109", 05/15 edition;
   (j) "Education Completion Certificate – Form E110", 05/15 edition; and
   (k) "Post-License Prescribed Topics – Form E113", 05/15 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB ROBERTS, Chairperson
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rhonda K. Richardson

1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process, sets the post-license education course criteria and requirements, and addresses non-compliance and record maintenance for post-license education.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish post-license education course provider requirements and approval process, the post-license education course criteria and requirements, and addresses non-compliance and record maintenance for post-license education.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process, sets forth the post-license education course criteria and requirements, instructor approval process, and addresses non-compliance and record maintenance for post-license education.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for post-license education course provider requirements, approval process, and to address non-compliance and record maintenance for post-license education.

2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This regulation was amended after the public hearing and comment period to remove the requirement that post-license education courses be available to all licensees subject only to space limitations.
   (b) The necessity of the amendment to this administrative regulation: The amendment was necessary to remove the requirement that post-license education courses be available to all licensees subject only to space limitations. It was determined that "broker-affiliated training programs" would have been required by KRS 165A.310 to comply with the statutes and regulations governing proprietary schools. This would have imposed a substantial hardship on "broker-affiliated training programs."
   (c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute mandates the promulgation of administrative regulation to establish procedures for implementing 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 affects post-license education course providers.

4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to follow the procedures set forth in this administrative regulation and to utilize the required forms.

5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: None. This administrative regulation will be implemented utilizing existing staff.
   (b) On a continuing basis: None. This administrative regulation will be implemented utilizing existing staff.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A new fee is established for applications for course approval.

9) TIERING: Is tiering applied? Tiering has not been applied because there is no disproportionate impact on the entities impacted.

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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, KRS 324.281, KRS 324.282.

(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. This administrative regulation will be implemented utilizing existing staff.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated that this administrative regulation will generate $1,500 in fees for 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? It is estimated that this administrative regulation will generate $1,500 in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? None. This administrative regulation will be implemented utilizing existing staff.

(d) How much will it cost to administer this program for subsequent years? None. This administrative regulation will be implemented utilizing existing staff.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 1:026. Dental services' coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d
NECESSITY, FUNCTION, AND CONFORMANCE: 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 citizen]. 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 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 for 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 from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.

(3) "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.

(a) "Incidental" means that a medical procedure:
(a) Is performed at the same time as a primary procedure; and
(b) Requires little additional practitioner resources; or
2. (b) Is clinically integral to the performance of the primary procedure.

(10) (b) "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) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(14) "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) "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 licensing board.

(16) "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) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.

(18) "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); and
(b) Meets the public health hygienist requirements established in KRS 313.040(8).

(20) "Recipient" means a provider 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.

(21) "Resident" is defined in KRS 205.8451(9).

(22) "Timely filing" means receipt of a claim by Medicaid:
(a) Within twelve (12) months of the date the service was provided;
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]

(2) 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.

(3) 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:  [shall]

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. [4] Being
b. [5] Incidental;
[6] Integral; or

(iii) [G] Mutually exclusive;

b. [7] Incorrect billing procedures, including incorrect bundling of procedures;

c. [8] Failure to obtain prior authorization for the service; or

d. [9] Failure to meet timely filing requirements.

(4) 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.

(5) A provider of a service to an enrollee shall be enrolled in the Medicaid Program.

(a) If a provider receives any duplicate or overpayment from the state or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization.

(b) Failure to provide 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:

(a) Be made in accordance with:[shall include]
(b) Be 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. General and Certain Service Coverage Requirements. (1) A covered service shall be:

(a) Medically necessary; and

(b) Except as provided in subsection (3) of this section, furnished to a recipient through direct practitioner contact.

(2) Dental visits shall be limited to twelve (12) visits per year.

(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 and over.

(3)[(ii)](a) A covered service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(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].

[(ii)](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 or supervision 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)[(iv)](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[907 KAR 1:626, Section 3, in the following CDT categories:]

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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;
3. A root canal therapy;
4. Denture relining;
5. A transitional appliance;
6. A prosthodontic service;
7. A temporomandibular joint therapy;
8. An orthodontic service;
9. A palliative treatment;
10. A house 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;
3. A panoramic X-ray;
4. Resin, amalgam, or composite restorative; or
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) per 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. 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;
   b. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and
6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider.

(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 or over, one (1) per twelve (12) month period, per recipient, and
2. For an individual under twenty-one (21) years of age, one (1) 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.

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same surface 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; and
   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 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 space maintainer, and a combination of the two 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.

(a) A permanent molar;
(b) One (1) per tooth, per date of service, per recipient; and
(c) Two (2) per molar, per recipient.

(2) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:

1. A crown that:
   a. Is determined by the department to be medically necessary; and
2. Include any of the following:
   a. A permanent prefabricated resin crown;
   b. A permanent 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
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 [gum] overgrowth due to:
   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) tooth area within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than three (3) 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)(b) 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) 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; and
(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:

(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 rehabilitation 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) 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] per [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 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.

(9) 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.]

(10) A service performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:

(a) Extractions; and
(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 habitual 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: (1) the correction of a disabling malocclusion for transitional, full permanent dentition; or (2) treatment of a cleft palate or severe facial anomaly.

(7) A disabling malocclusion shall:

(a) Exist if a patient:

1. Exhibits a severe crossbite if it involves an overjet of more than six (6) millimeters and one (1) of the skeletal conditions specified in subparagraphs (a) through (g) of this paragraph.
2. Exhibits a true anterior open bite if:
   a. Either skeletal or habitual in nature, if left untreated will result in:
      (i) One (1) or two (2) teeth slightly out of occlusion; or
      (ii) Where the incisors have not fully erupted; or
3. Has a functional shift of the mandible or severe dental attrition for an individual under the age of twelve (12) years.
4. Demonstrates a significant anterior-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III:
   a. Dental or skeletal; and
   b. If skeletal, requires a traced cephalometric radiograph supporting significant skeletal malocclusion.
5. Has an anterior crossbite that involves:
   a. 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) 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.
6. (a) Exhibit a severe impinging overbite encompassing one (1) or more teeth, if it shows palatal soft tissue contact
7. Demonstrates a traumatic or iatrogenic overjet.

(b) A letter detailing:

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:

1. May include several teeth, one (1) of which shall be a molar; and
2. Is handicapping in a function fashion as follows:
   (i) Functional shift;
   (ii) Facial asymmetry; or
   (iii) Involving at least two (2) posterior teeth; and
3. Demonstrating:
   (i) An arch collapse;
   (ii) A lateral functional shift;
   (iii) A skeletal restriction; or
   (iv) A discrepancy which:
      (a) May include several teeth, one (1) of which shall be a molar; and
      (b) 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;
7. Demonstrates:
   (i) Has a significant posterior open bite that does not involve:
      a. Partially erupted teeth; or
      b. One (1) or two (2) teeth slightly out of occlusion;
   (ii) Except for third molars, demonstrates an impacted tooth/teeth that:
      a. Will not eruct 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. Has an extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal conditions specified in subparagraphs (a) through (g) of this paragraph:
10. 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. Has a congenital or developmental disorder giving rise to a handicapping malocclusion; or
12. 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:

1. May include several teeth, one (1) of which shall be a molar; and
2. Is handicapping in a function fashion as follows:
   (i) Functional shift;
   (ii) Facial asymmetry; or
   (iii) Involving at least two (2) posterior teeth; and
3. Demonstrating:
   (i) An arch collapse;
   (ii) A lateral functional shift;
   (iii) A skeletal restriction; or
   (iv) A discrepancy which:
      (a) May include several teeth, one (1) of which shall be a molar; and
      (b) 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;
7. Demonstrates:
   (i) Has a significant posterior open bite that does not involve:
      a. Partially erupted teeth; or
      b. One (1) or two (2) teeth slightly out of occlusion;
   (ii) Except for third molars, demonstrates an impacted tooth/teeth that:
      a. Will not eruct 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;
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
369.110 to 369.129.
(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.[(4)] 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 21, 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”, September[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

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: 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 coverage of dentists 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.

(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 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 need 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 license 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 the use of electronic signatures is necessary to comport with the current dental terminology (CDT) description of debridment; authorizing the use of electronic signatures is necessary to modernize the amendments; requiring a 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 hygieneist requirements (201 KAR 5:62); covering an extra periodic examination within twelve (12) months if provided in conjunction with a comprehensive oral examination (213 KAR 3:010); and additional clarifications.
(b) 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.

(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.

The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid coverage of dentists and requirements regarding the coverage of dental services.

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 1:826) 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. The amendment after comments revises the DMS Dental Fee Schedule incorporated by reference into the administrative regulation by adding a current dental terminology (CDT) code - D0145 - for oral evaluation of a child under three (3) years of age along with counseling of the primary caregiver; adds a CDT code for house/extended care facility calls (D9410); adds a CDT code (D7471) for a procedure related to bony rises; increases reimbursement for a procedure (D5620 – repair cast framework-related to preparing for dentures) from $97.50 to $210.00; expands coverage of intravenous sedation (on the DMS Dental Fee Schedule) to be covered for adults; revises the prophylaxis coverage limit for individuals under twenty-one (21) two (2) prophylaxis per recipient per twelve (12) months to one (1) per recipient per six (6) months; revises the coverage criteria for a sealant and simultaneous restorative procedure to allow for a sealant and simulate a procedure for individuals under the same tooth as long as it is not on the same surface of the tooth; revises the root canal criteria; deletes the age limit - twenty-one (21) – for intravenous sedation; and re-inserts prior criteria regarding a disabling malocclusion (criteria related to orthodontic procedures.)
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. Adding the CDT code for oral evaluation of a child under the age of three (3) years along with counseling of the primary caregiver is necessary to enhance oral health care for children. Adding the CDT code for house-extended care facility calls to the fee schedule is necessary as the administrative regulation establishes that DMS covers the services but the corresponding CDT code was not included on the fee schedule. Adding the CDT code related to bony ridges dental work is necessary as the procedure is an appropriate medically necessary procedure. Increasing the rate for repair cast framework work is necessary as the prior rate was less than half of the costs experienced by dentists in performing the service. Expanding intravenous sedation to be covered for adults is appropriate and fiscally responsible as DMS currently covers a much more expensive option—general anesthesia for dental procedures in a hospital. Expanding intravenous sedation to be covered for adults will enable adults to be sedated in dental offices and receive dental treatment rather than have such treatment performed in a hospital. Revising the prophylaxis limit for individuals under twenty (21) years along with counseling of the primary caregiver is necessary to address a problem of mobile dental vans performing such services at schools within six (6) months which also precludes the child’s primary dentist from providing such care to the child at least once a year. Revising the coverage restriction for a sealant and simultaneous restorative procedure is necessary as it would be appropriate to have a simultaneous restorative procedure on the same tooth but not on the same surface of the tooth. Revising the root canal criteria is necessary to ensure that the entire tooth is treated as a result of the procedure. Deleting the age limit for intravenous sedation is necessary as this is an appropriate covered service for adults and DMS currently covers a more expensive option—general anesthesia provided in a hospital for dental work. Re-inserting prior criteria regarding a disassembling malocclusion is being done in response to public comments for clarity.

(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 fund arrangements.

(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 program or 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.

4. 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.
5. (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
(Amended After Comments)

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 citizens. 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) "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.

400.203. "Disabling malocclusion" means that a patient has a condition that meets the criteria established in 907 KAR 1:026.
(3) "Incidental" means that a medical procedure:
   (a) Is performed at the same time as a primary procedure; and
   (b) Requires little additional practitioner resources; or
   (2) "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.
(1) "Manual" or "MM" means that a procedure is priced according to complexity.
(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 5:130.
(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.

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-
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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resin, 2 surfaces, posterior</td>
<td>$71.50</td>
<td></td>
</tr>
<tr>
<td>Resin, 3 surfaces, posterior</td>
<td>$85.80</td>
<td></td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, posterior</td>
<td>$101.40</td>
<td></td>
</tr>
<tr>
<td>Prefab, stainless steel crown primary</td>
<td>$119.60</td>
<td></td>
</tr>
<tr>
<td>Prefab, stainless steel crown permanent</td>
<td>$133.90</td>
<td></td>
</tr>
<tr>
<td>Prefab resin crown</td>
<td>$113.10</td>
<td></td>
</tr>
<tr>
<td>Pin-retention, per tooth, in add. to restoration</td>
<td>$19</td>
<td></td>
</tr>
<tr>
<td><strong>Endodontic Procedures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pulp cap direct</td>
<td>$17</td>
<td></td>
</tr>
<tr>
<td>Therapeutic pulpotomy</td>
<td>$67.60</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy anterior</td>
<td>$274.30</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy bicuspid</td>
<td>$344.50</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy molar</td>
<td>$384</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, anterior</td>
<td>$201.50</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, bicuspid first root</td>
<td>$201.50</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, molar first root</td>
<td>$201.50</td>
<td></td>
</tr>
<tr>
<td>Replace missing or broken tooth on denture</td>
<td>$40.30</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, per tooth on additional root</td>
<td>$197</td>
<td></td>
</tr>
<tr>
<td><strong>Periodontic Procedures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per quadrant</td>
<td>$336.70</td>
<td>PPR required</td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per tooth</td>
<td>$135.20</td>
<td>PPR required</td>
</tr>
<tr>
<td>Periodontal scaling root planing per quadrant</td>
<td>$101.40</td>
<td>PA required</td>
</tr>
<tr>
<td>Full mouth debridement</td>
<td>$68.50</td>
<td>Pregnant women only</td>
</tr>
<tr>
<td><strong>Removable Prosthodontic Procedures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repair resin denture base</td>
<td>$61.10</td>
<td></td>
</tr>
<tr>
<td>Repair cast framework</td>
<td>$97.50</td>
<td></td>
</tr>
<tr>
<td>Replace broken tooth on a denture</td>
<td>$36.40</td>
<td></td>
</tr>
<tr>
<td>Reline complete maxillary denture</td>
<td>$128.70</td>
<td></td>
</tr>
<tr>
<td>Reline complete mandibular denture</td>
<td>$128.70</td>
<td></td>
</tr>
<tr>
<td>Interim partial upper</td>
<td>$219.80</td>
<td></td>
</tr>
<tr>
<td>Interim partial lower</td>
<td>$336.70</td>
<td></td>
</tr>
<tr>
<td><strong>Maxillofacial Prosthetic Procedures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nasal prosthesis</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Auricular prosthesis</td>
<td>$1,881</td>
<td></td>
</tr>
<tr>
<td>Facial prosthesis</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Obturator (temporary)</td>
<td>$1,992</td>
<td></td>
</tr>
<tr>
<td>Obturator (permanent)</td>
<td>$1,992</td>
<td></td>
</tr>
<tr>
<td>Mandibular resection prosthesis</td>
<td>$1,660</td>
<td></td>
</tr>
<tr>
<td>Speech aid pediatric (ages 13 and under)</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Palatal augmentation prosthesis</td>
<td>$1,550</td>
<td></td>
</tr>
<tr>
<td>Palatal lift prosthesis</td>
<td>$1,881</td>
<td></td>
</tr>
<tr>
<td>Oral surgical splint</td>
<td>$886</td>
<td></td>
</tr>
<tr>
<td><strong>Unspecified maxillofacial prosthodontic procedure</strong></td>
<td>$MP</td>
<td>PPR required</td>
</tr>
<tr>
<td><strong>Oral and Maxillofacial Surgery Procedures</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Kentucky Medicaid Dental Services

<table>
<thead>
<tr>
<th>Description</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit ed oral evaluation (trauma related injuries or acute infection only)</td>
<td>$33</td>
<td>PPR required</td>
</tr>
<tr>
<td>Comprehensive oral evaluation</td>
<td>$26</td>
<td></td>
</tr>
<tr>
<td>Intraoral complete series</td>
<td>$63.70</td>
<td></td>
</tr>
<tr>
<td>Intraoral periapical, first film</td>
<td>$10.40</td>
<td></td>
</tr>
<tr>
<td>Intraoral periapical, each additional film</td>
<td>$7.80</td>
<td></td>
</tr>
<tr>
<td>Bilowing, single film</td>
<td>$9.10</td>
<td></td>
</tr>
<tr>
<td>Bilowing, 2 films</td>
<td>$18.20</td>
<td></td>
</tr>
<tr>
<td>Bilowing, 4 films</td>
<td>$29.90</td>
<td></td>
</tr>
<tr>
<td>Panphographic film</td>
<td>$39</td>
<td>PA required for ages 6 and under</td>
</tr>
<tr>
<td>Cephalometric film</td>
<td>$61.10</td>
<td></td>
</tr>
<tr>
<td>Prophylaxis</td>
<td>$48.10</td>
<td></td>
</tr>
<tr>
<td>Sealant per tooth (ages 5-20)</td>
<td>$19.50</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, fixed unilateral</td>
<td>$135.20</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, fixed bilateral</td>
<td>$262.60</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, removable unilateral</td>
<td>$134.00</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, removable bilateral</td>
<td>$202.00</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 1 surface</td>
<td>$49.40</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 2 surfaces</td>
<td>$65.00</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 3 surfaces</td>
<td>$76.70</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 4 or more surfaces</td>
<td>$93.60</td>
<td></td>
</tr>
<tr>
<td>Resin, 1 surface, anterior</td>
<td>$57.20</td>
<td></td>
</tr>
<tr>
<td>Resin, 2 surfaces, anterior</td>
<td>$71.50</td>
<td></td>
</tr>
<tr>
<td>Resin, 3 surfaces, anterior</td>
<td>$85.80</td>
<td></td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, anterior</td>
<td>$101.40</td>
<td></td>
</tr>
<tr>
<td>Resin, 1 surface, posterior</td>
<td>$57.20</td>
<td></td>
</tr>
</tbody>
</table>
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) $87.60
Incision and drainage of abscess (extraoral) $80.60
Removal of foreign body $261.60
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 $269 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 or older:

Kentucky Medicaid Dental Services

<table>
<thead>
<tr>
<th>Description</th>
<th>Upper Limit</th>
<th>Authorization Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diagnostic Procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited oral evaluation (trauma related injuries only) $33</td>
<td>PPR required</td>
<td></td>
</tr>
<tr>
<td>Comprehensive oral $26</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Intraoral complete series $49
Intraoral periapical, first film $8
Intraoral periapical, each additional film $6
Bitewing, single film $7
Bitewing, 2 films $11
Bitewing, 4 films $23
Panoramic film $39
Cephalometric film $47

Preventative Procedures
Prophylaxis $32

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 surfaces anterior $78
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 addition 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
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
Obliterator (temporary) $863
Obliterator (permanent) $1,992
Mandibular replacement prosthesis $1,660
Speech aid - Adult $2,036
Palatal augmentation prosthesis $1,881
Palatal lift prosthesis $1,992
Oral surgical splint $896
Unspecified maxillofacial prosthetic procedure MP PPR required
Orol and Maxillofacial Surgery Procedures
Extraction, deciduous tooth $38
Extraction, erupted tooth or exposed root $38
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: (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.


(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
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the 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: 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; 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.

(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 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. The amendment after comments revises the DMS Dental Fee Schedule incorporated by reference into the administrative regulation by adding a current dental terminology (CDT) code - D0145 - for oral evaluation of a child under three (3) years of age along with counseling of the primary caregiver; adding a CDT code for house/extended care facility calls to the fee schedule is necessary as the prior rate was less than half of the costs experienced by dentists in performing the service. Expanding intravenous sedation to be covered for adults is appropriate and fiscally responsible as DMS currently covers a much more expensive option – general anesthesia for dental procedures in a hospital. Expanding intravenous sedation to be covered for adults will enable adults to be sedated in dental offices and receive dental treatment rather than have such treatment performed in a hospital.
   (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 compliance and will reimburse for dental services as a result of compliance and will receive increased reimbursement - by twenty-five (25) percent – for preventive and diagnostic procedures.

(3) 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: Before the new fee schedule is adopted, dental providers will need to make sure that all dental providers are familiar with the new 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.

(4) 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.
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 than 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. Evaluate 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.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Family Support
(Amended After Comments)


STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law and to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families(TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP),[oc] the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

Section 1. Hearing Information. (1) A participant shall be informed of:
(a) The right to a hearing;
(b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and
Section 2. Request for a Hearing. (1) An individual shall request a hearing by:
(a) Completing and submitting a PAFS-78, Request for Hearing[, Appeal], or Withdrawal;
(b) Submitting a written request; or
(c) Making an oral request.
(2) The hearing request may be:
(a) Submitted to the local Department for Community Based Services office; or
(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2[275 East Main], Frankfort, Kentucky 40601[40621].
(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:
(a) Forty (40) days of the date of the advance notice of adverse action;
(b) Thirty (30) days of the notice of:
1. Denial of an application; or
2. Decrease or discontinuance of an active case; or
(c) The time period the action is pending if the hearing issue is a delay in action.
(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.
(3) An appellant may be granted good cause by the cabinet:
(a) For:
1. A delay in requesting a hearing; or
2. A delay in requesting a continuation of benefits; or
3. Failure to appear for a hearing; or
4. Postponement of a scheduled hearing; and
(b) If the appellant:
1. Was away from home during the entire filing period;
2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
4. Had a household member who was seriously ill; or
5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain active or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.
(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:
(a) Ten (10) days of the date of the notice of adverse action; or
(b) Twenty (20) days of the date of the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.
(3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.
(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:
(a) Considered overpayments as defined in KRS 205.211; and
(b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.
(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:
(a) Hearing process, including the right to case record review prior to the hearing;
(b) Right to representation;
(c) Availability of free representation by legal aid or assistance from other organizations within the community; and
(d) Time and location of the hearing.
(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:
(a) Hearing; or
(b) Final order being issued if the hearing has already been conducted.
(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:
(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
(b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant’s Hearing Rights. (1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.
(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source: (a) Not associated with the original action; and
(b) Agreeable to both the appellant and the cabinet if:
1. The hearing involves medical issues; and
2. The hearing officer considers it necessary.
(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
(a) Be in writing; and
(b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:
(a) Request for the postponement is made prior to the hearing; and
(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.
(2) The hearing officer shall decide if a hearing is postponed.
(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:
(a) Scheduled by the hearing officer; and
(b) Conducted in accordance with KRS 13B.080 and 13B.090.
(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.
(3) To secure all pertinent information on the issue, the hearing officer may:
(a) Examine each party or witness who appears; and
(b) If necessary, collect additional evidence from a party.
(4)(a) If consent is obtained from each party to the appeal and
(b) From each party required to testify under oath, a telephonic hearing may be conducted.
(b) Parties to a telephonic hearing shall:
1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and
2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:
   a. Are introduced as evidence into the hearing record; and
   b. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order in accordance with KRS 13B.110, which:
   (a) Summarizes the facts of the case;
   (b) Specifies the:
      1. Reasons for the recommended order; and
      2. Address to which a party in the hearing may send an exception to the recommended order; and
   (c) Identifies the:
      1. Findings of fact;
      2. Conclusions of law;
      3. Supporting evidence; and
      4. Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent simultaneously to the:
   (a) Appellant or representative;
   (b) Appeal Board for Public Assistance established in accordance with KRS 205.231; and
   (c) Department for Community Based Services’ Division of Family Support.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception in accordance with KRS 13B.110(4) with the Appeal Board for Public Assistance.

(2) A written exception or rebuttal shall:
   (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
   (b) Be based on facts and evidence presented at the hearing;
   (c) Not refer to evidence that was not introduced at the hearing; and
   (d) Be sent to each other party involved in the hearing.

Section 12. Appeal Board Review. (1) In accordance with KRS 13B.120 and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal to the:
   (a) Parties to the hearing; and
   (b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:
   (a) Offer the opportunity to:
      1. File a brief; or
      2. Request permission to submit new or additional evidence; and
   (b) State the tentative date on which:
      1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and
      2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:
   (a) The records of the hearing; and
   (b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:
   (a) Submit written arguments; and
   (b) Present oral arguments at the Appeal Board for Public Assistance’s discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If necessary, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 13. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS 13B.120 and 205.231.

(2) The Appeal Board for Public Assistance may reverse the decision in subsection (1) of this section if the following criteria are met:
   (a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and
   (b) Within twenty (20) days of the Appeal Board for Public Assistance’s decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:
      1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383;
      2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;
      3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;
      4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-233; and
      5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the Appeal Board for Public Assistance’s decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

Section 14. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance and shall include:
   (a) The month of application; or
   (b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance.

Section 15. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:
   (a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer; and
   (b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board; and
   (c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; and
   (d) $300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:
   (a) Appellant and legal counsel agree to the fee; and
   (b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:
   (a) Be the responsibility of the counsel or agent; and
   (b) Not be deducted from the benefits provided to an appellant.


(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 AG, 9/25/15; September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services,
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Elizabeth Caywood and Amanda Gehring

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or the Child Care Assistance Program (CCAP). The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting hearings regarding public assistance programs.

(b) 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 hearing process for K-TAP, LIHEAP, SSP, or applicants and recipients of CCAP.

(c) How this administrative regulation assists in the effective administration of the statutes: This administrative regulation assists in the effective administration of the regulations by establishing the content for public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment to this administrative regulation updates Material incorporated by reference, form PAFS-78, to comply with the formatting requirements of a new eligibility and enrollment system. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the regulations by establishing the content for regulated entities, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 K-TAP families, 4,887 Kinship Care recipients, and 2,893 State Supplementation recipients, LIHEAP served 129,657 households in Federal Fiscal Year 2014. In July 2015, CCAP served 13,342 families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The amendment to this administrative regulation will create no new additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be state General Funds and federal funds made available through the Temporary Assistance for Needy Families, the Low Income Home Energy Assistance Program, and the Child Care and Development Fund Block Grants. The funding has been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 602, 8624, 9857-9858q
2. State compliance: KRS 138.170, 194.010(2), 194.050(1), 199.8994, 205.231(5)
3. Minimum or uniform standards contained in the federal mandate: The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation 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 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 138.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624, 9857-9858q
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 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 administrative regulation will not generate any revenues in the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amended After Comments)


RELATES TO: KRS 205.170(1), 42 U.S.C. 601-619
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet, KRS 205.200 requires the Cabinet for Health and Family Services to administer the public assistance program in conformity with the Public Assistance Titles of the Social Security Act, its amendments, and other federal acts and regulations, including 42 U.S.C. 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1).

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Health and Family Services to administer an oath or affirmation to an applicant or recipient:

(1) Family support specialist III;
(2) Case management specialist[∫];
(3) Program specialist;
(4) Field services supervisor;
(5) Service region administrator associate; and
(6) Service region administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

(1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:
   (a) Lost;
   (b) Misplaced; or
   (c) Stolen;
(2) Request a replacement check; or
(3) View a check endorsement.

Section 3. Process. (1) A PAFS-60, Affidavit, shall be used if:

(a) A check is reported lost or stolen to request a replacement check within twelve (12) months of intended receipt; or
(b) A check endorsement is viewed when a reported lost or stolen check is cashed.

(2) If the payee reports non-receipt, loss, or theft of a check, the payee shall come into the office to complete a PAFS-60 within four (4) work days of reporting non-receipt of the check in effort to provide a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and
(b) If the signature is not that of the payee, the payee shall sign the PAFS-60 stating the:
   1. Signature on the photocopy is not the payee’s signature; and
   2. Payee received no benefit from the cashing of the check.


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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Elizabeth Caywood and Amanda Gehring

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations in conformity with KRS 205.170(1).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish employee designations for the administration of oaths and affirmations in accordance with KRS 205.170(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the designation of specific employees by the secretary of the cabinet to administer oaths and affirmations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the designation of specific employees to administer oaths and affirmations when a cash benefit check is reported stolen or lost.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation redefines the requirement of the PAFS-60, Affidavit, to comply with the requirements of a new web-based eligibility and enrollment system.

(b) The necessity of the amendment to this administrative regulation: This amendment aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment with forthcoming business processes and technology.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring process and policy alignment, resource
maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 Kentucky Transitional Assistance Program (K-TAP) families, 4,687 Kinship Care recipients, and 7,392 K-TAP recipients required to participate in the Kentucky Works Program. Participation in the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T) is voluntary in Jefferson County only at this point in time.

(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 require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each regulated entity identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the regulated entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding sources for this administrative regulation include federal funds under the Temporary Assistance for Needy Families Block Grant, Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program, 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 will not be necessary to implement this amendment.

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

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

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619
2. State compliance standards. KRS 194A.050(1), 205.170(1), 205.200
3. Minimum or uniform standards contained in the federal mandate, 42 U.S.C. 601-619
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. The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601-619.
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 in effect.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

**922 KAR 1:310. Standards for child-placing agencies.**


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 services 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
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

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) "Adoptive home" means a home in which the family has been approved by the child-placing agency to adopt a child.

(4) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(5)(4) "Applicant" means an individual or a family subject to approval by the child-placing agency as a: (a) Foster home; or (b) Adoption placement.

(6)(5) "Board of directors" is defined by KRS 273.161(8)(2).

(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.

(8)(7) "Child" is defined by KRS 199.001(4) and 600.020(7).

(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.

(9)(8) "Child with medical complexity" means a child who is determined to have a medical condition pursuant to 922 KAR 1:340.

(10)(9) "Child-pricing agency" is defined by KRS 199.001(7).

(11)(10) "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 Board 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.

(12)(11) "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.

(13)(12) "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.

(14)(13) "Foster home" means: (a) A "foster family home" as defined by KRS 199.001(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.

(15)(14) "Health professional" means a person actively licensed as: (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.

(16)(15) "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.

(17)(16) "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.

18)(17) "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.

19)(18) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(19)(19) "Licensed health care professional" is defined by KRS 216.300(1).

(20)(20) "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350.

21)(21) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

22)(22) "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.

23)(23) "Program director" means the person responsible for supervising the day-to-day operation of the program.

24)(24) "Respite care" means temporary care provided by another individual or family that meets requirements specified in Section 13 of this administrative regulation to provide respite 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) Allows an adjustment period for the child placed in out-of-home care.

25)(25) "Sex crime" is defined by KRS 17.500(8).

26)(26) "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.

27)(27) "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.

28)(28) "Therapeutic foster care" is defined by KRS 158.135(1)(c).

29)(29) "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

30)(30) "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-license.

(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 personnel policies and procedures.

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;

(a) (i) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and
   (ii) 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) of this section;
      c. Staff training; and
      d. Incident reports.
   (b) The criteria and process of the evaluation required in paragraph (a)3 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 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 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 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) 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) 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) If a substantiated finding 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 
(e) A 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 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 (e) 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 (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 record and central registry checks pursuant to paragraph (h) of this subsection. 
(j) 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. 
(k) Notification. 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; or 
(c) Treatment director. 
(l) 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(11)(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 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) A minimum of two (2) home visits for the purpose of conducting: 
1. One (1) interview with each of the household members individually to assess each member's attitude toward the placement or adoption of a child; and 
2. One (1) family consultation with all household members present to observe the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; 
(b) Two (2) family consultations. 
[5][6] A personal interview with each member of the applicant's household; 
(4) An assessment of the attitude of each member of the applicant's household toward the placement of a child into the home or adoption; 
(5) 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) A statement of 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) Is free of a communicable or infectious disease; and 
(b) Has no illness or condition that would present a health or safety risk to a child placed in the applicant's home; 
(f) A signed statement by a licensed physician or licensed health professional regarding the applicant's physical ability to provide necessary care for a child; 
(g) Verification that the applicant has a source of income separate from: 
1. Foster care reimbursement; or 
2. Adoption assistance; 
(h) Documentation of references to include: 
1. The name of three (3) personal references who: 
(a) Are not related to the applicant; and 
(b) Shall be interviewed by the child-placing agency staff in person or by telephone; or 
2. Two (2) credit references; 
(i)[1] Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures; 
(j)[4] Documentation of an in-person or telephone 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; 
(k)[4] If applicable, verification from the applicant regarding: 
1. Previous divorce;
2. Death of a spouse; or
3. Present marriage;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) 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 safe recreation space appropriate to the developmental needs of a child placed in the applicant's home;

(o) 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

(p) 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, 1508 and 1509; [and]
3. Is age and size appropriate for the child; and
4. Has a mattress that:
   b. Is in good repair; and
   c. Has a clean, fitted sheet that shall be changed:
      (i) Weekly; or
      (ii) Immediately if it is soiled or wet;

(q) 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. Alcoholic beverages;
   2. Poisonous or hazardous materials; [and]
   3. 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;

(r) 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;

(s) If a business open to the public adjoins the applicant's home, consideration of potential negative impacts on the child and family, including:
1. Hours of operation;
2. Type of business; and
3. Clientele; and

(t) 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(b)2(3)2(e)] of this section shall be granted if the applicant is:
   a. Between eighteen (18) and twenty-one (21) years of age; and
   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, all 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 child-placing agency shall request written approval from the state agency with custody of the child, for the foster home to provide services as certified:
1. Certified provider of Services for Community Living in accordance with 907 KAR 1:145;
2. Therapeutic foster care provider for adults in accordance with 907 KAR 3:030;[p]
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) [Exception 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;
   2. Adopted a sibling of the child available for adoption; and
   3. Commissioner approves, in writing, the employee to adopt.


(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

(10) A child-placing agency may make an exception to subsection (9) of this section if:
(a) The placement restriction is not in the best interest of a child; and
(b) The child is approved by a health professional to self-administer medicine under the supervision of the placement restriction.

Section 6. Placement, Case Management, and Supervision of a Child in a Foster Home, Medically Complex Foster Home, or Therapeutic Foster Care Home.

(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 620.090(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 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) Justification for an exception to subsection (4)(a) or (5) of this section shall be:
1. Documented in the foster parent file;
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 with a written justification for an exception to subsection (4)(a) or (5) of this section to designated cabinet staff prior to the proposed placement.

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 1:495, Section 2(2).
(c) If an exception to subsection (4) or (5) of this section is necessary for a placement to occur outside of normal business hours:
1. The proposed child-placing agency will verbally provide all information contained within the DPP-112B to designated cabinet staff prior to the placement;
2. A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and
3. The completed DPP-112B shall be submitted on the first business day following placement.
(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) Visitation, health, and educational needs of the child;
      (ii) Child’s permanency goals and related objectives;
      (iii)Methods for accomplishing each goal and objective; and
      (iv) 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;
   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;
      6. Possession of a deadly weapon by a child;
   7. (b) 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) 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; and
         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;
   (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;
   (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;
   (l) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;
   (m) Inform the foster parent, in accordance with KRS 609(901)(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;
   (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;
   (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;
   (p) Be responsible for monitoring the child’s school progress and attendance;
   (q) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child’s needs;
   (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;
   (s) Conduct and document a face-to-face visit with the child at least once per month; and
   (t) Maintain foster care records in accordance with Section 17(15) 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[Sections 6(7)(g) and (h), and 12(6)[and (7)] of this administrative regulation; or

(i) 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[a(e)] 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[b(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;[a(a)]
[c][c] Background information about a foster child and the child’s family;
[d][2.] An example of an actual experience of a therapeutic foster care parent that has fostered a child;
[e][3.] Stages of grief;
[f][4.] Behaviors linked to each stage of grief;
[g][5.] Long-term effects on a child from separation and loss;
[h][6.] Permanency planning for a child, including independent living services;
[i][7.] 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][8.] Family functioning, values, and expectations of a therapeutic foster care home;
[k][9.] Changes that may occur in the home with placement of a child regarding:

[1.][a] Family functioning;
[2.][b] Family adjustment;
[3.][c] Identify issues;
[4.][d] Discipline issues and child behavior management; and
[5.][e] Family disruption;
[6.] Specific requirements and responsibilities of a therapeutic foster care home;
[m][14.] Behavior management;
[n][12.] Communication skills;
[o][16.] Skill teaching;
[p][14.] Cultural competency;
[q][15.] Behavior management de-escalation techniques;
[r][16.] The dynamics of [the sexually abused] child who has experienced sexual abuse or human trafficking; and
[s][12.] The effect of chemical abuse or dependence by the child or the child’s biological parent.

(3)[2.] A therapeutic foster care home shall receive;
[a][1.] A minimum of twenty-four (24) hours of annual training; or
[b][2.] Training in accordance with 922 KAR 1:495 if the home provides care to a child in the custody of the cabinet.

(4)[3.] 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) 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)[six (6)] 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)[2.] 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[the] child-placing agency shall follow the procedure set forth in Section 6(6)(b) of this administrative regulation[922 KAR 1:495, Section 8(5)].

(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 (1) 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[the] 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[least] 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.
(1) 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.

(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 [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 [medically fragile] foster home becomes medically complex [medically fragile] in accordance with subsection (1) of this section, the Division of Protection and Permanency [commissioner] or designee and child-placing agency shall reevaluate the placement and ensure the child’s needs can be met.

(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; and
(c) 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;
   (d) 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. 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 [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.
(5) [G] An approved medically complex [medically fragile] foster home shall receive annual reappraisal, 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.
(6) [G] 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.
(7) [Z] 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.
(8) [Z] Unless an exception is approved prior to placement by the Division of Protection and Permanency [commissioner] or designee, a child with medical complexity shall not be placed in a placement other than an approved medically complex foster home.
(9) [Z] A child-placing agency shall request an exception to subsection (5) and through (11) of this section, in accordance with Section 6(6)(b) of this administrative regulation 922 KAR 1:350, Section 2(2).

(1) 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...
[medically fragile] child with medical complexity placed in the home.

(b) The training shall be conducted by [licensed] health[care] professional.

(2) Unless an exception is granted by the director of the Division of Protection and Permanency or designee 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 212];

(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;
   d. Support the child’s health plan developed by designated cabinet staff; and
   e. 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 through forty] 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[three (3) days];
   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];
   c. A hospitalization or life-threatening accident or illness;
   d. An absence without official leave;
   e. A suicide attempt;
   f. Criminal activity by the child requiring notification of law enforcement;
   g. Death of any member in the household;
   h. A child's possession of a deadly weapon;
   i. Significant change in the number of people living in the home;
   j. Significant change in circumstance in the foster home;

6. Report immediately to the child-placing agency through which the child is placed[or], 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;
   f. A child's possession of a deadly weapon;

(7) Failure of the foster child or foster parent to comply with the supervision plan;

(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;

(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;

(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;

(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;

(12) Participate in a case planning conference concerning a child placed by the child-placing agency;

(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(14) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(15) Facilitate the delivery of[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;
   b. Annual Physicals and examinations for the child;

(16) Treat a child placed by the child-placing agency with dignity;

(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.003; and

(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) 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)(b), (d), and (k) through (n) 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 concerning 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. 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)(b), (5), and (6) through (10) of this administrative regulation; and
   b. Receive training on how to meet the specific needs of the[medically fragile foster care] child with medical complexity from:
1. A licensed professional; or
2. The foster parent trained by a licensed 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 placing agency, 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;
   1. Within thirty (30) days of the child’s placement with the child-placing agency; or
   2. Prior to the child being placed out of state or no later than thirty (30) days of the child’s placement with the child-placing agency.
   (b) An exception to the requirements 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)(a) The assessment shall be revised as needed.
   (d) 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 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 (7) and (9) 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 Waiting for Placement or an Approved Foster Home. (1) Annually, a child-placing agency shall:
   (a) Conduct a personal interview in the home with an approved:
      1. Adoptive home awaiting placement; or
      2. Foster home; and
   (b) Assess:
      1. Any change in the home;
      2. The ability of the home to meet the needs of a child placed in the home; and
   (c) The home’s continued compliance with the requirements of this administrative regulation in:
      a. Section 4(3)(h), (j), and (l) through (m) and (o) through (q), and Sections 5(1)(c) and 7(3)(a) through (j) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;
      b. 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.
   (2) Sections 5(1)(c) and 7(3)(a) through (j) of this administrative regulation, with regard to annual training, if the home is approved as a foster home: or
   (a) 922 KAR 1.495 with regard to annual training if the home is approved to receive a child in the custody of the placing agency; and
   (b) 922 KAR 1.495 with regard to annual training if the home is approved.
   (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.
   (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; or
      (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 of:
      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 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 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(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(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 subsequent placement;
(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) Incidents 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:  
(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) Annual training requirements that are met in accordance with Section 5(1)(c)[5(2)(c)] of this administrative regulation;  
(g) Cop of the written statement of the foster home’s closure completed pursuant to Section 22(5)(2)(5) of this administrative regulation;  
(h) If applicable, copy of the written statement of the foster home’s closure completed pursuant to Section 22(5)(2)(5) of this administrative regulation;  
(i) Placement of a child;  
(j) Incident reports, including details of the child’s behavior and supervision at the time of the incident;  
(k) Social history and assessment;  
(l) Monthly progress notes based on the ITP and supervision plan;  
(m) Quarterly revisions to the child’s ITP;  
(n) 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) 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 unless 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 adoption 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;  
2. Early development;  
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:  
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:  
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.  
(7) Prior to finalization of the adoptive placement, a licensed physician or other 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.  
(8) 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.  
(9) 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  
(10) 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.  
(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.  
(12) 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:  
(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[19] 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(24) 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)(e), (g), and (i) through (s)(4(3)(h), (j), and (l) through (w)), 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 7(5)(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 may [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)(4)(d) 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. If the foster or adoptive parent refuses to be interviewed, the notice shall be provided within fourteen (14) calendar days of the foster or adoptive parent’s refusal.
(5) The written notice shall include:
   (a) 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.

(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: September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact persons: Elizabeth Caywood and Amanda Gehring
(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 statute 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 statute 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) How much revenue will this administrative regulation establish 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, 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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year. This administrative regulation will generate no new revenues for the first year.

5. Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency

922 KAR 1:340. Standards for independent living programs.


STUTARY 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-serving 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, Section 16.
(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, Section 16, 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;
  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; or
  (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) Physical and behavioral 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: September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street, Suite 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 persons: Elizabeth Caywood and Amanda Gehring

(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 statute: This administrative regulation conforms to the content of the authorizing statute 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 statute: This administrative regulation will assist in the effective administration of the statute 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 statute: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statute: 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 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 agency (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
Division for Community Based Services
Department of CommunityBased Services

VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. (Family preparation for foster parents, adoptive parents, and respite care providers for children in the custody of the Cabinet)


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 capability 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) "Care Plus" means a foster care program for a child who is determined to have special needs as specified in Section 5 of this administrative regulation.

(5) "Child" is defined by KRS 199.011(4) and 600.020(8).

(6) [(5)] "Child with medical complexity" means a child who has a medical condition in accordance with Section 4(1)(b) of this administrative regulation.

(7) [(6)] "Commissioner" means commissioner of the Department for Community Based Services.

(8) [(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 the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(9)(8)(4) "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.

(10)(9)(4) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(11) "Independent living services" means services provided to an eligible child[student] to assist them in the transition from the dependency of childhood to living independently.

(12) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child’s home of origin.

(13)(11) "Medically fragile child" means a child who has a medical condition as defined in Section 6(1)(b) of this administrative regulation.

(14) "Professional experience" means paid employment or volunteer work in a setting where there is supervision and periodic evaluation.

(15) "Resource 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.

(16) "Respite care" means temporary care provided by a provider, as specified in Section 17(21) 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].

(17) "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) 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.

(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) DPR-112A, Placement Exception Request; and

(b) DPR-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 a person 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.
(c) 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. The foster or adoptive parent[resource home] applicant is related to the child under the custodial control of the cabinet;
2. The foster or adoptive parent[resource home] applicant can meet the needs of the child; and
3. 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.

(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) 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:
(a) By a health professional who is not a member of the applicant’s household, based upon health information within the past year, documenting:
1. The applicant’s general health, including that the applicant is free of communicable or infectious disease or a health condition that presents a health or safety risk to a child placed in the applicant’s home; and
2. That there are no known health factors that would interfere with the applicant’s ability to become a foster or adoptive parent; and
(b) As part of:
1. The initial application;
2. The annual re-evaluation; or
3. A foster or adoptive home review pursuant to Section 13 of this administrative regulation 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 part of:
   a. The initial application; or
   b. A foster or adoptive[resource home review pursuant to Section 13 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[Resource Home] Applicants Regarding Dependent Children, for each child member of the applicant family.

(10) A foster or adoptive[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; and
(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, each adult[children] of the foster or adoptive parent[resource home] applicant who does 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[resource home] applicant regarding:
(a) Previous divorce; and
(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 KRS 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in KRS 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[resource home may] request written approval from designated cabinet staff.
to provide services as [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.

[4] 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 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[4508 and 4509].

(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)[1b] 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)[b] 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 211]; and
(d) Provide indoor and outdoor[outdoor] recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home[resource home].

(11)[1b] 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:
(a1). 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)[[14] A dangerous animal shall not be allowed near the child.

(15)[(12) Medication shall be kept in a locked container.
(13a) First aid supplies with unexpired dates shall be available and stored in a place easily accessible to an adult.
(16)[14b] A working telephone shall be available in the home.
(17)[16b] 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 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 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 lifelong and progressive and that 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];
(a1. 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(b):
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:
   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 child, the parent’s own children, shall reside in a medically complex foster or adoptive home.
(a) A one (1) parent medically complex foster or adoptive 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 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) [Unless an exception is approved pursuant to Section 16(2)(2)(g) of this administrative regulation and a medically complex foster or adoptive 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 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 home shall:
   1. Not care for more than two (2) medically fragile children with medical complexity; and
   2. Demonstrate access to available support services.
(5) [Unless an exception pursuant to Section 16(2)(2)(g) of this administrative regulation is approved, a medically fragile child with medical complexity shall be placed in an approved medically complex foster or adoptive home.
(a) An approved medically complex foster or adoptive home parent shall cooperate in carrying out the child’s health plan.
(b) [Agrees to care][Carees] for a child in the custody of the cabinet approved by cabinet staff as a care plus child because the child:
   1. Has a diagnosed or 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 8, and receives a certificate of completion for the twenty-four (24) hour care plus resource home training beyond the family preparation as required by Section 9 of this administrative regulation;
(e) [Agrees to maintain][Maintains] a daily record of the care plus child’s activities and behaviors; and
(f) [Agrees to attend][Attends] all case planning conferences.
(2) [Unless an exception is approved pursuant to Section 16(2)(2)(g) of this administrative regulation and the care plus home parent can demonstrate access to available support services, the cabinet 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 parent’s own children, shall reside in a care plus home;
(b) [A one (1) parent care plus 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) [A two (2) parent care plus home shall] [a. not care for more than two (2) care plus children as described in subsection (1)(b) of this section] and
   b. Demonstrate access to available support services.
(3) [Unless the home is closed pursuant to Section 14(18) of this administrative regulation, an approved care plus foster or adoptive home parent shall receive annual reapproval by the cabinet as a care plus home.
(a) Annually completes training specified in 922 KAR 1:495, Section 9, prior to the anniversary date of the original approval as a resource home.
(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) Completes: (i) Training or training approved in advance by the cabinet in carrying out the child's medically fragile curriculum; or
(ii) Professional experience related to the care of 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;
   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;
   c. Receives individual documented training from a health professional or licensed practical nurse as defined by KRS 314.011(8) in how to care for the specific specialized medically fragile child who shall be placed in the resource home;
   d. Maintains current certification in:
      1. CPR; and
      2. First aid;
   e. 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) 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, one of the following:
   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) A medically fragile curriculum approved by the cabinet 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 and a [resource] home, applicant shall complete training requirements in accordance with 922 KAR 1:495:
(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. Development 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.
(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.
(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.
(6) 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.

3. The family preparation process shall emphasize:
   a) Self-evaluation;
   b) Participation in small group exercises; and
   c) Discussion with experienced resource home parents.

4. 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(1)(d) 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) 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) 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[.](1)[+4] 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(1)(d) 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].

Section 7.41. 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)[2B] 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] 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 8.41. Denial of a Foster or Adoptive[Resource Home] 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] 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 9.42. Expectations of a Foster or Adoptive Home[Resource Home: 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) 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 of a child placed by the cabinet;[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] 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) Suicide attempt of a child placed by the cabinet; or
      g) Criminal activity by the child placed by the cabinet 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; 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; or
(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child’s 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 194.060, 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[te] 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)[13(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] Physical 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 10.12: 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) Meets [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;
   b. Met training requirements in accordance with 922 KAR 1:495, Section 3[required in Section 15(1)(a)] of this administrative regulation;
(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[io 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. 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;
(b) 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

[O][O] 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[required in Section 15(1)(a)] of this administrative regulation;
4. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
5. Provides for the care of a[medically fragile] child with medical complexity.
[O][O] 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;
2. Maintains a current license as a:
   a. Registered nurse in accordance with KRS 314.011(5); or
   b. health professional; and
[O][O] 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;
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[required in Section 15(1)(a)] of this administrative regulation;
4. [O] Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
5. [O] Provides for the care of a child described in Section 5(1)(b)2 of this administrative regulation.
[O][O] 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; and
2. Has been approved for two (2) years as a foster or adoptive parent; and
3. Has met training requirements in accordance with 922 KAR 1:495, Section 3[required in Section 15(1)(a)] of this administrative regulation; and
4. [O] Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
5. [O] 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 behavior problems.
needs related to the medical condition(specialized medically-fragile child).

[(4)(a)] A degree specialists 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 210.041(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

[children].

[(4)(b)] 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. Incidental;
   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 [(3)K-CHIP[5]].
   (b) Designated cabinet staff shall approve or deny
       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/resource home
       parent who provides foster care services:
   1. [il] 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 parent/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/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 of up to fourteen (14) days if designated cabinet
       staff document that:
     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[21] 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.[144] 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 1:1010, Section 7].

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.670-61.683 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 parent’s training 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 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[15 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 KRS 502 KAR 1:496.

(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 the month of the anniversary date of the initial 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(4 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 DEP 1289, Annual Strengths/Needs Assessment for Resource Families, during the interview.

(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 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.

(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(4 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.[42] Reapplication. (1) A former foster or adoptive [resource home] parent whose home was closed pursuant to Section 14[1](a)(14)(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 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.[22] 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) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:
(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;
(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and
(c) The completed DPP-112A shall be submitted on the first business day following placement.
(4) 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).
(5)[44] 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.
(6)[45][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 alternate 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] 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. Section 4(1)[6(1)], as specified in Section 9(2) of this administrative regulation, have:
(i) Meet criteria established in Sections 2(13)[3(13)] through (g) of this administrative regulation, if the child is designated as medically complex, a medically fragile child; or
(ii) 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] home, the respite care provider shall:
(a) Meet criteria established in Sections 2(13)[3(13)] through (f) of this administrative regulation, or
(b) If providing respite care for a child described in Section 5(1)(b)[2(1)(b)] of this administrative regulation, have:
1. Professional experience or training in the mental health treatment of children or their families; and
2. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1)[3(1)] provided by the cabinet or approved in advance by the cabinet.
2. If providing respite care for a medically fragile child with medical complexity or specialized medical complexity:
(i) Meet training requirements in accordance with 922 KAR 1:495, Section 7;
(ii) Hold a current certificate in first aid;
(iii) 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
(a) Be a health professional; and
(b) Undergo health screenings as specified in Section 3(8) and (9) of this administrative regulation;
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) Attend an informational meeting;
(b) Receive training [family preparation] as specified in Section 6(9) of this administrative regulation; and
(c) If the respite care provider is caring for a medically fragile child...
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

(4) Shall comply with Sections 16 and 17[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 [Resource Home] Applicants Regarding Dependent Children", 10/15[edition 02/08]; and

(c) "DPP-112A, DCBS Placement Exception Request", 10/15[eedition 02/08];

(d) "DPP-112B, Placement Exception Plan, edition 02/08", and

(e) "DPP-1289, Annual Strengths/Needs Assessment for Resource Families, edition 02/08”.

(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: September 9, 2015 FILED WITH LRC: September 11, 2015 at 3 p.m. CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Elizabeth Caywood and Amanda Gehring

(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 by establishing criteria regarding the capacity of 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: This administrative regulation 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 2,904 publicly approved foster and adoptive homes.

(4) Provide an analysis of 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.

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, 675.

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 agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect?
   This administrative regulation 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 project 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
(Amended After Comments)

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), 605.100(28).
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 carry out 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) "Care Plus" means a foster care program for a child who is determined to require an adoption process.

   (4) "Care Plus" means a foster care program for a child who is determined to have special needs as well.

   (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);

   (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

   (7) "Medical 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.

   (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:

   (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. Sensitive 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; and
15. Reasonable and prudent parent standard; and
16. Supporting independent living skills.

2(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 justification is documented pursuant to paragraphs (d) and (e) 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. A justification to provide foster or adoptive parent training other than in a group setting pursuant to paragraph (c) of this subsection shall:

1. Include the circumstance, which prevents the foster or adoptive parent training from occurring in a group setting; and
2. Be documented 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 parent shall complete a curriculum approved by the cabinet.

(f) 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) Prior to or during 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 in the following areas:

(a) Trauma informed care curriculum provided or approved by the cabinet;
(b) Psychotropic medications curriculum provided by the cabinet;
(c) Sexual abuse curriculum provided or approved by the cabinet; and
(d) Behavior management and skill development.

(2) If a private child-placing agency provides training in accordance with subsection (1) of this section prior to a foster or adoptive home’s approval, the thirty (30) hours shall be in addition to the fifteen (15) hours of pre-service training required by Section 2(2)(a) of this administrative regulation.

3 A foster or adoptive home approved prior to the adoption of this administrative regulation shall complete the training described in subsection (1) of this section within two (2) years of the effective date of this administrative regulation.

4 If training requirements of subsections (1) through (3) of this section are met, a foster or adoptive parent shall complete the following prior to or during each subsequent anniversary of the foster or adoptive parent’s initial approval:

(a) Ten (10) hours of 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 once every five (5) years in accordance with KRS 199.464.

5 A foster or adoptive parent shall complete training regarding the reasonable and prudent parent standard in accordance with 42 U.S.C. 671(a) and Section 2(2)(a)15 of this administrative regulation within one (1) year of the effective date of this administrative requirement (a). Prior to the initial 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.

Following the completion of paragraph 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. Observational 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.

Prior to or during the anniversary month of the foster parent’s initial approval as a foster parent and annually thereafter, 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)(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.

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, therapeutic foster care applicant in accordance with 922 KAR 1:350 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 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.

An approved therapeutic foster care 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) Private child-placing agency or cabinet-sponsored training, or training approved in advance by the cabinet 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. Observational 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.

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 care plus parent 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.

An approved care plus foster parent shall:
(a) Complete the annual training requirements as specified in Section 3(3)(1) and (2) of this administrative regulation; and
(b) Prior to or during the anniversary month of the foster parent’s initial approval as a foster parent, complete twelve (12) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet in the following topic areas:
(1) Professional experience related to the care of a child with medical complexity:
(a) Upon the approval of designated care plus foster home;
(b) If the foster or adoptive parent:
1. Is a health professional; and
2. Has completed twelve (12) hours of continuing education focusing on pediatrics within the past year that will assist the parent in the care of a child with medical complexity.

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 respite care training or training approved in advance by the cabinet in the following topic areas:
(a) Comparable in content to curricula provided by the cabinet or private child-placing agency;
(b) Recognized evidence-based practices.

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)(3)(1)-(6) 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 private child-placing agency;
(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 initial application to provide services to a child in the custody of the cabinet 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”, 11/15(10:45), 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.
Contact persons: Elizabeth Caywood and Amanda Gehring

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes 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 through its establishment of training standards 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 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: 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:

1. Initial and ongoing training are mandated for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.
2. The Kentucky Cabinet for Health and Family Services will be impacted by this administrative regulation.
3. Training expectations presently exist in 922 KAR 1:310 for private child-placing agencies and 922 KAR 1:350 for public agency homes.
4. What this administrative regulation does: This administrative regulation was established to create consistent training for foster parents, adoptive parents, and respite care providers caring for 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 subsequent years.
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:
PROPOSED AMENDMENTS

PERSONNEL CABINET
Office of the Secretary

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2016[2015] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2016[2015] Plan Year Kentucky Employees’ Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.


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, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 15, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015 at 10:00 a.m. at 501 High Street, 3rd Floor, Conference Room, 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 close of business November 2, 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: Sharron Burton, Deputy Executive Director, 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: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2016 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2016.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2016 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute authorizing the self-insured plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating reference the 2016 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2015 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2015. This amendment replaces the 2015 plan year handbook with the 2016 plan year handbook. The 2016 plan year handbook contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan for plan year 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for plan year 2016. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2016 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statute: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2016 plan year handbook by reference in accordance with KRS 18A.2254.
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 all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees participating in the Program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105; 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law, an amended administrative regulation will be promulgated in 2016 and each subsequent plan year.

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

4. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

5. 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 is an amendment. This administrative regulation will not require an increase in funding or fees.

6. What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

9. TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(Amendment)

VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.211(7), 321.235(6), 321.441(2)
STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.

Section 1. (1)(a) A veterinarian shall be required to biennially complete thirty (30) hours of continuing education to be eligible for renewal of his or her license. A veterinarian may complete the
required thirty (30) hours of continuing education required for renewal by the completion of audio or video recordings, electronic, computer, or interactive material prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(b) Of the required hours, at least twenty (20) hours shall be directly related to the practice of veterinary medicine and no more than ten (10) hours may be in related areas such as practice management.

(c) A veterinarian may acquire no more than four (4) hours of continuing education in each renewal period by the completion of audio or video recordings, electronic, computer, or interactive materials or programs on scientific subjects prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(2) A veterinary technician and veterinary technologist shall annually complete six (6) hours of continuing education to be eligible for renewal of his or her registration. A veterinary technician and veterinary technologist may complete the required six (6) hours of continuing education required for renewal by the completion of audio or video recordings, electronic, computer, or interactive materials or programs prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(3) Continuing education shall be earned from October 1 of each renewal period until September 30 at the end of the period.

(4) A veterinarian applying for renewal after completing his or her initial term of licensure after graduating from a veterinary college may complete fewer hours of continuing education to be eligible for renewal as established in this subsection.

(a) A veterinarian completing his or her initial term of licensure that graduated from a veterinary college during the first year of the preceding biennium shall complete fifteen (15) hours of continuing education to be eligible for renewal. This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.211.

(b) The board may permit the immediate reinstatement of a veterinarian completing his or her initial term of licensure that graduated during the second year of the preceding biennium. This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.

Section 2. Approved Courses. (1) The following programs shall be approved:

(a) All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine;

(b) Programs which are approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB); and

(c) All programs approved by the board, not associated with RACE or the American Veterinary Medical Association and its suborganizations.

(2) Those programs shall impart knowledge directly relating to the practice of veterinary medicine to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may assure expansive and comprehensive care to the public.

Section 3. (1) A licensee and a registrant shall:

(a) Secure documentation of attendance at a course; and

(b) Annually, list on [Licensed Veterinarian Biennial Renewal Form][a] or [Veterinary Technician Annual Renewal Form][b], as appropriate, each course he or she attended.

(2) The board may require documentation of attendance at continuing education courses to be submitted to it.

Section 4. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or an extension of time within which to fulfill the same or make the required reports.

(a) A written request for medical disability or illness waiver or extension of time shall be:

1. Submitted by the licensee and registrant; and

2. Accompanied by a verifying document signed by a licensed physician.

(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year.

(c) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or registrant shall reapply for another extension.

(2) The board may grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to have completed the continuing education requirement for licensure periods during which that status exists.

(b) A licensee who is called to active duty in the armed forces[,] shall not be required to have completed the continuing education requirement for licensure periods during which that status exists.

(c) The licensee requesting an extension or waiver under this provision shall submit the appropriate military assignment form, deployment orders, or a statement from the licensee’s unit commander confirming the call-up or deployment.

Section 5. (1)(a) A license or registration that has been terminated shall be reinstated if a licensee or registrant submits proof that he has completed the required number of continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted.

(b) The board may permit the immediate reinstatement of a terminated license or registration if the licensee or registrant agrees to complete the required number of continuing education hours within six (6) months of the date of reinstatement.

(2) Prior to renewal of a license or registration for the licensure period following the licensure period during which the license or registration was reinstated, a reinstated licensee or registrant shall have completed the number of continuing education hours required for renewal of a license or registration by Section 1 of this administrative regulation.

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

(a) "Licensed Veterinarian Biennial Renewal Form[56753]", August 2015; and

(b) "Veterinary Technician Annual Renewal Form[56754]", August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or by sending a request to the board at P.O. Box 1360, Frankfort, Kentucky 40602.
five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business Monday, November 2, 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: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the programs and means of obtaining continuing education for veterinary licensure.

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for veterinary licensees. This administrative regulation lists the programs that are approved for continuing education and the method for approving other programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to advise veterinary licensees of the minimum continuing education requirements and the means of obtaining continuing education hours. This administrative regulation lists the programs that are approved for continuing education credits.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 321 requires the board to establish the criteria for licensure as a veterinarian and permits the board to prescribe continuing education requirements. This administrative regulation establishes the minimum continuing education requirements and identifies the programs that are eligible for continuing education credits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs licensees of the continuing education requirements and the approved methods and programs for obtaining continuing education credit.

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

Is this amendment to an existing administrative regulation: Yes. This administrative regulation is a replacement for KRS 321.230.

(a) How the amendment will change this existing administrative regulation: The amendment will expand the methods of obtaining continuing education credit to include computer or online courses. The amendment will establish a continuing education level for first term veterinary licensees.

(b) The necessity of the amendment to this administrative regulation: The amendment will expand the approval of continuing education programs to include online and computer courses offered by approved organizations. The amendment will reduce the continuing education requirement for first term veterinary licensees.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.211(7), KRS 321.441(2), and KRS 321.235(6) permit the board to establish continuing education criteria for veterinary professionals. KRS 321.441(2) and KRS 321.235(6) require the board to establish license renewal requirements for veterinary professionals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will expand the number of courses approved for continuing education credit to include online and computer programs offered by approved organizations. The amendment will reduce the number of continuing education hours necessary for renewal of first term licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 2,500 persons will seek licensure within the board in the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation allows applicants to complete continuing education courses online or by computer to renew their veterinary licensure. This administrative regulation will allow first term licensees to complete fewer continuing education hours to renew licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Veterinary licensees will be able to complete online or computer programs offered by approved organizations to obtain continuing education credit. First term licensees will be able to complete fewer continuing education hours to renew licensure after their first term.

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

(a) Initially: The budget for the board is an annual allotment of $277,600 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the board is estimated to continue to have a budget of an annual allotment of $277,600 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by the veterinary licensees and applicants.

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

(a) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the procedure for obtaining continuing education hours for veterinary licensees.

(b) Tiering: Is tiering applied? No. Tiering is not applied because the requirements in this administrative regulation apply equally to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Veterinary Examiners is an administrative body created by KRS 321.230.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, KRS 321.211, and KRS 321.441.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of veterinary license applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of veterinary license applicants for the subsequent years.

(c) How much will it cost to administer this program for the first
Section 1. Each licensee shall comply with the minimum standards of professional and ethical conduct established in subsections (1) through (9) of this section.

(1) A licensee shall not advertise the licensee’s services except as provided by 201 KAR 21:065.

(2) A licensee shall not commit an act of sexual misconduct, sexual harassment, or any act punishable as a sexual offense.

(3) A licensee shall refrain from chemical or substance abuse. The chemical or substance abuse shall not have to take place in a chiropractic office for the board to take action against a licensee.

(4)(a) Division of a professional fee shall not be made, except upon the basis of actual services rendered.

(b) Unless prohibited by law, each licensed chiropractor of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

(5)(a) A licensee shall not abandon a patient.

(6)(a) Telemarketing shall be permitted only if the telemarketing is non-targeted, taken from a general list of phone numbers, and if not violating the state’s no-call provisions.

(b) A chiropractor shall not contact or cause an accident victim to be contacted by the chiropractor’s employee, agent, contractor, telemarketer, or anyone acting in concert with the chiropractor.

(7) A licensee shall report to the board any reasonably suspected violation of KRS Chapter 312 or 201 KAR Chapter 21 by another licensee or applicant within thirty (30) days.

(8) A licensee shall report to the board any civil judgment, settlement, or civil claim made against the licensee within thirty (30) days.

(9) A licensee shall report to the board any discipline from another state licensing board within thirty (30) days of receiving notice of final disciplinary action.

Section 2. Each licensee shall comply with the minimum standards of practice established in subsections (1) through (6) of this section.

(1) A licensee shall keep in confidence whatever the licensee may learn about a patient in the discharge of professional duties. Information shall be divulged by the licensee only if required by law or authorized by the patient.

(2) A licensee shall render care to each patient that is consistent with treatment and care that would be rendered by a reasonably prudent chiropractor licensed in the Commonwealth of Kentucky and shall give a candid account of a patient’s condition to the patient, or to those responsible for the patient’s care.

(3) A licensee shall inform the patient of the licensee’s clinical diagnosis, treatment plan, and expected outcome of treatment prior to the onset of care.

(4) A licensee shall give timely notice to the licensee’s patient or to those responsible for a patient’s care if the licensee withdraws from a case so that the patient may obtain another chiropractor.

(5) A licensee shall not abandon a patient.

(6) A licensee shall practice the licensee’s profession in accordance with the provisions of KRS Chapter 312 and 201 KAR Chapter 21.

Section 3. (1) Each licensee shall cooperate with the board by:

(a) Furnishing germane documents requested by the board;

(b) Furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;

(c) Appearing before the board at the time and place designated; and

(d) Properly responding to a subpoena issued by the board.

(2) A licensee shall comply with an order issued by the board.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: August 28, 2015
FILED WITH LRC: September 8, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015, at 1:00 p.m., local time, at the Kentucky Board of Chiropractic Examiners office, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing (five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 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: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp, D.C.
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethical conduct and standards of practice for Kentucky licensed chiropractors.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the code of ethical conduct and standards of practice for Kentucky licensed chiropractors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9)(a) authorizes the board to amend administrative regulations to establish a code of ethical conduct governing the practice of chiropractic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the code of ethical conduct
and standards of practice for Kentucky licensed chiropractors.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation removes a section which has been challenged in court as unconstitutional.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to prevent further loss of state funds by continuing to accrue legal costs as the case continues in the court system.
(c) How the amendment conforms to the content of the authorizing statutes: Removal of this one section will not change the conformity of the regulation to its authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: Removal of this one section will allow for clear understanding of the code of ethics without question as to its constitutionality.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 1,075 licensed doctors of chiropractic in the Commonwealth of Kentucky.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:
(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: All licensees must conduct their practice within the ethical code and standards of practice outlined in this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify the ethical code and standards of practice, making compliance easier for the licensee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation 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 board’s operation is funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as a result of compliance.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A
(c) How much will it cost to administer this program for the first year? N/A
(d) How much will it cost to administer this program for subsequent years? N/A

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

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

Other Explanations:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772,[214.615(1)], 327.010, 327.050, 327.060, 327.075, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

(1) Examination;
(2) Endorsement; or
(3) Reinstatement.

Section 2. Examination Candidate.

(1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:
(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
(b) Submit certification of completion by the educational administrator of that program;
(c) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS) on the transmission, control, treatment, and prevention of human immunodeficiency virus, infection and AIDS;
(d) Have successfully completed the Jurisprudence Exam;
(e) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
(f) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:
(a) Have successfully completed the academic and clinical
requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (g) of this section.

(3) After three (3) failed attempts in taking the examination, an applicant shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.

(4) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation;

(2) Complete a Supervisory Agreement with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. Upon issuance of a temporary permit:

(1) The physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

(a) Has practiced in Kentucky for more than one (1) year; and

(b) Has an unrestricted license.

(2) The supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit within twenty-four (24) hours of when the service was provided;

(d) May designate a temporary supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The temporary supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant’s temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

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

(a) “Application for Credentialing”, December 2011;

(b) “Supervisory Agreement”, December 2011; and

(c) “Applicant Special Accommodations Request Form”, December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: July 30, 2015.
FILED WITH LRC: September 15, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 4:00 p.m. E.T., at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 close of business, November 2, 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.
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(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that applicants complete a Cabinet for Health Services course on HIV/AIDS.

(b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.050(8) and KRS 214.610(1).

(c) Verification that, since the last renewal period, the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will no longer be required to complete a Cabinet for Health Services Course on HIV/AIDS.

(d) How much will it cost each of the entities identified in question (3) to comply with this administrative regulation or amendment, 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 no longer be required to complete a Cabinet for Health Services Course on HIV/AIDS.

(b) How much will it cost each of the entities identified in question (3) to comply with this administrative regulation or amendment: Approximately $0.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no cost to the entities identified in question (3).

(d) How much will it cost to administer this program for subsequent years? None.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government agency (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 agency (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 (+/-): None. Expenditures (+/-): None. Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Revised)

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS 12.355, 164.772, 214.610(1), 327.050(8), 327.070, 327.075

STATUTORY AUTHORITY: KRS 327.040(10), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each even numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as established in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application; and

(3) Verification of continued competence as established in 201 KAR 22:045;

(a) Compliance with the course requirement in KRS 327.050(8), verification of completion of a Cabinet for Health and Family Services (CHFS) approved two (2) hour course on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1), but not more than one (1) time every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and

(b) Verification that, since the last renewal period, the credential holder has not:

(1) Been in violation of KRS 327.070;

(2) Had a professional license or credential disciplined or under current disciplinary review in this state or another jurisdiction;

(3) Had a civil claim made against the credential holder which related to the credential holder’s practice of physical therapy, or

(4) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772.

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Section 2. Credentials not renewed by the board by March 31 of each uneven numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

(a) Meeting the requirements of Section 1(2) and (4) of this administrative regulation for the current renewal period;
(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:
   1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or
   2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant; and
   (c) Submission of payment of the reinstatement fee established in 201 KAR 22:135.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;
(2) Submission of all credentials from other jurisdictions since last renewal; and
(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:
   (a) Submission of evidence of professional competency;
   (b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;
   (c) Successful completion of the board-approved examination; or
   (d) Any combination of paragraphs (a) through (c) of this subsection.

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

(a) "Renewal [or Reinstatement] Application", July 2015; and
(b) "Reinstatement Application", July 2015 (June 2013, is incorporated by reference).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: July 30, 2015

FILED WITH LRC: September 15, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 4:00 p.m. E.T., at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 close of business, November 2, 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment eliminates certain verification requirements prior to renewal of a physical therapist's credential or a physical therapist assistant's credential, including the renewal requirements that a credential holder: (a) verify completion of a Cabinet for Health Services course on HIV/AIDS once every ten (10) years; (b) has not violated KRS 327.070; (c) has not been disciplined in this state or another jurisdiction; (d) has not had a civil claim made against the credential holder related to their practice of physical therapy; and (e) has not defaulted on the repayment obligation of financial aid programs administered by the Kentucky Education Assistance Authority pursuant to KRS 164.772.
   (b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.050(8) and KRS 214.610(1).
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.050.
   (d) How the amendment will assist in the effective administration of the statutes: By eliminating the HIV/AIDS course requirement, the regulation will be consistent with the requirements of KRS 327.050.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5000 physical therapists and physical therapist assistants.

(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: Credential holders will no longer be required to verify completion of a Cabinet for Health Services Course on HIV/AIDS once every ten (10) years.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities in question (3).
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will no longer be required to verify completion of a Cabinet for Health Services Course on HIV/AIDS once every ten (10) years.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: No cost to the board.
   (b) On a continuing basis: No cost to the board.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement 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 will be no increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals 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? Physical therapists and physical therapists assistants credentialed by the Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050.

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

Expenditures (+/-):

Revenues (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(1) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant’s educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the “Coursework Evaluation Tool” (CWT) copyrighted by Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) Completes the HIV/AIDS education requirement as specified in KRS 327.050;

(d) Completes the Jurisprudence Exam;

(e) [ ] Completes the HIV/AIDS education requirement as specified in KRS 327.050;

(f) [ ] Completes the Jurisprudence Exam;

(g) [ ] Completes the Jurisprudence Exam;

(h) [ ] Completes the Jurisprudence Exam;

(i) [ ] Completes the Jurisprudence Exam; and

(j) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months of practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate’s physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 2(1) and (2) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 2(1)(a) through (e)(4) of this administrative regulation; and

(b) Submitted an approved [ ] Supervisory Agreement for Physical Therapists Educated in a Foreign Country[c].

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing", 9/2/04[c]; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country", 10/12/00[c].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY THE BOARD: July 30, 2015

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 4:00 p.m. E.T. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. 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 close of business, November 2, 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that foreign-educated applicants complete a Cabinet for Health Services course on HIV/AIDS.
(b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.050, 327.060, 214.610, and 214.615.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.050 and 327.060.
(d) How the amendment will assist in the effective administration of the statutes: By eliminating the HIV/AIDS course requirement, the regulation will be consistent with the requirements of KRS 327.050 and 327.060.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5000 physical therapists and physical therapist assistants.

(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: Foreign-educated applicants will no longer be required to complete a Cabinet for Health Services Course on HIV/AIDS.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will no longer be required to complete a Cabinet for Health Services Course on HIV/AIDS.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost to the board.
(b) On a continuing basis: No cost to the board.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no increase in fees or funding.
(d) How much will it cost to administer this program for the first full year the administrative regulation is to be in effect. No effect.
(e) How much will it cost to administer this program for the first year? None.
(f) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals 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? Foreign-educated applicants for physical therapy credentials.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No 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) As a result of compliance, what benefits will accrue to the state or local government (including cities, counties, fire departments, or school districts)? None.
(d) How much will it cost to administer this program for the first year? None.
(e) 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:
Section 1. (1) The board approves the following schools or colleges of podiatric medicine as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida;

(b) California School of Podiatric Medicine at Samuel Merritt University, Oakland, CA [College of Podiatric Medicine, San Francisco, California];

(c) Des Moines University College of Podiatric Medicine and Surgery, Des Moines, Iowa;

(d) Kent State University College of Podiatric Medicine, Independence, OH [Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois];

(e) Midwestern University Arizona School of Podiatric Medicine, Glendale;

(f) New York College of Podiatric Medicine, New York, New York [Ohio College of Podiatric Medicine, Cleveland, Ohio];

(g) Dr. William M. Scholl College of Podiatric Medicine at the Rosalind Franklin University of Medicine and Science, North Chicago, IL [Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania];

(h) Temple University School of Podiatric Medicine, Philadelphia, PA; and

(i) Western University Health Sciences College of Podiatric Medicine, Pomona, CA [Arizona Podiatric Medicine Program at Midwestern University, Glendale, Arizona].

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an application for a license with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed Application for Examination with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant.

(3) The fee for the examination or reexamination shall be $250 and shall be paid when the application for examination or reexamination is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

Section 3. (1) Prior to approval for examination, an applicant shall:

(a) Submit to a nationwide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police or the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for Examination, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services after issuance of the license and immediately submit proof of the registration to the board.

(2) A person who has received a license from the board shall not prescribe any controlled substance before he or she is registered with KASPER.

(3)(a) The board shall temporarily suspend a license pursuant to 201 KAR 25:051, Section 6(2)(a), Section 5 of this administrative regulation, if a licensee:

[a] Fails to register with KASPER after the approval for licensure by the board; or

[b] Prescribes a controlled substance prior to registration with KASPER.

In addition to the temporary suspension, the board may take additional disciplinary action against a license pursuant to KRS 311.480.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT G. LEVINE, DPM, President
APPROVED BY AGENCY: August 19, 2015
FILED WITH LRC: August 24, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 10:00 a.m. Eastern Time at the Office of the Attorney General, 1024 Capital Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend...
the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 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: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This regulation establishes the procedures for the administration of the statutes: the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in the state of Kentucky.

(a) What this administrative regulation does: This regulation sets forth the procedures relating to the examination and issuance of a license to practice podiatry in the state of Kentucky. More specifically listing the board approved podiatry schools that satisfy the administrative regulation.

(b) The necessity of this administrative regulation: These changes are allowed under KRS 218A.202(2), KRS 311.380(3) and KRS 311.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation updates and amends the listing of board approved colleges or schools of podiatry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the procedures relating to the examination and issuance of a license to practice podiatry in the state of Kentucky. More specifically listing the board approved podiatry schools that satisfy the educational requirement for licensure.

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

(a) How the amendment will change this existing administrative regulation: This regulation sets forth the listing of board approved colleges or schools of podiatry.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it sets forth an accurate listing of board approved colleges or schools of podiatry.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide licensees and associates with clarity regarding board approved colleges and schools of podiatry.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Applicants and Licensees.

(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 clarifies the board approved schools and colleges of podiatry pursuant to KRS 311.420.

(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 licensees and associates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants for licensure as a podiatrist, will have an accurate listing of the board approved podiatry schools that satisfy the educational requirement for licensure.

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

(a) Initially: No additional 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 board’s operation is funded by the registration fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied as the criteria apply to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Kentucky Board of Podiatry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202(2), 311.410(4), and 311.420.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

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

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

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Podiatry
(Amendment)

201 KAR 25:021. Annual renewal of licenses, fees.

RELATES TO: KRS 218A.205, 311.450
STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450 requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to
complete the annual renewal notice and return it, along with the annual renewal fee, to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee[s] in the amount of $175 ($150) shall be attached to the completed annual renewal notice when the notice is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, postal money order, personal check, or credit card.

(3) All information requested on the annual renewal notice form shall be furnished to the board when the completed annual renewal notice form is returned to the board, together with a statement of compliance with the continuing education administrative regulations of the board.

(4) Every renewal application shall include proof of current registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of $200 ($100).

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3)(e), a licensee:
(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;
(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or
(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take additional disciplinary action against a licensee pursuant to KRS 311.480.

ROBERT G. LEVINE, DPM, President
APPROVED BY AGENCY: August 19, 2015
FILED WITH LRC: August 24, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2015 at 10:00 a.m. Eastern Time at the Office of the Attorney General, 1024 Capital Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 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: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle
(1) Provide a brief summary of: This administrative regulation requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

(a) What this administrative regulation does: This administrative regulation requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

(b) The necessity of this administrative regulation: These changes are allowed under KRS 218A.202(2), KRS 311.450.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation updates and amends the podiatry license renewal application fee and delinquent penalty fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment is necessary to set the renewal and penalty fees for licensed podiatrists.

(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 sets forth the updated fees for podiatry license renewals and delinquent payment fees. The regulatory history reflects that this fee regulation was last updated in 1994.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it establishes renewal fees that fund administration of the Kentucky Board of Podiatry.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes allowing Podiatry Board to set fees for renewals and delinquent payments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide funding for the board to regulate the licensure of practicing podiatrists in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200 Licensees.

(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) How the amendment will change this existing administrative regulation: The amendment will provide funding for the board to regulate the licensure of practicing podiatrists in the Commonwealth of Kentucky.

(b) The necessity of the amendment: This amendment is necessary to set the renewal and penalty fees for licensed podiatrists.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional 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 board's operation is funded by the registration fees paid by licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:
The regulation did increase fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202(2), 311.450.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $6,000 will be generated from this regulation (approximately 200 licensees with an increased fee of twenty-five (25) dollars totaling $5,000, plus approximately five (5) licensees renewing late totaling $1,000).

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

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

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

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

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

GENERAL GOVERNMENT CABINET

Board of Podiatry

(Amendment)


RELATES TO: KRS 218A.205, 311.450(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3)(h) requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:
1. A professional seminar, including the Kentucky Podiatric Medical Association’s annual conference;
2. An accredited school of podiatry continuing education program; or
3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course’s presentation.

(2) A Category B continuing education hour may relate to podiatric medical issues or general practice issues and may be earned by attendance at an educational meeting:

(a) Home study courses;
(b) Hospital, clinic, or in-house staff lectures; or
(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;
(b) Be kept for three (3) years;
(c) Include a receipt or certification received for the program related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and

(d) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and

(d) For Category A programs, include proof of APMA/CPME certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(4) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:

(a) Complies with the requirements of KRS 214.610(1); and
(b) Is approved by:
1. The Kentucky Cabinet for Health and Family Services; or
2. The board.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;
(b) Illness of the licensee or an immediate family member; or
(c) Death or serious injury of an immediate family member.
(2) A written request for waiver or extension of time involving medical disability or illness shall be:
(a) Submitted by the person holding the license; and
(b) Accompanied by a document verifying the illness or disability signed by the:
1. Licensee’s personal physician; or
2. Immediate family member’s personal physician.
(3) A waiver or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.
(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.
(3) A person on inactive status shall be permitted to use the term “podiatrist” but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.
(4) A licensee seeking relicensure from inactive to active status shall fulfill the following requirements:
(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:
1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application and requesting in writing that the license be made active;
2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation; and
3. Pay:
   a. The renewal fee of $175[$150] established in 201 KAR 25:021, Section 1; and
   b. A reactivation fee of $200[$100].
   c) Accompanied by a document verifying the illness or disability.
(b) If a licensee has been in inactive status for more than five (5) consecutive years, he shall:
1. File a completed Application for Examination in accordance with 201 KAR 25:011 and pay the required fee;
2. Be approved by the board to take the examination; and
3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.
(2) A written request for board approval shall contain:
(a) A brief summary of the continuing education;
(b) The educational objectives of the continuing education;
(c) The date, time, and place of the provision of the continuing education;
(d) The name and credentials of the individual providing the continuing education; and
(e) The name of the organization providing the continuing education, if applicable.
(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:
(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;
(b) Is developed and provided by an individual with knowledge and experience in the subject area; and
(c) Contributes directly to the professional competence of a licensee.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Application for Examination”, 4/00; and
(b) “Kentucky Board of Podiatry License Renewal Application”, 8/15/1402.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT G. LEVINE, DPM, President
APPROVED BY AGENCY: August 19, 2015
FILED WITH LRC: August 24, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2015 at 10:00 a.m. Eastern Time at the Office of the Attorney General, 1024 Capital Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 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: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Nicole S. Biddle
(1) Provide a brief summary of: This administrative regulation requires all licensed podiatrists to complete continuing education, the annual renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation is amended to ensure it is consistent with 201 KAR 25:021 establishing an annual license renewal fee and a delinquent penalty fee.
(a) What this administrative regulation does: This administrative regulation requires all licensed podiatrists to complete the annual continuing education, a renewal notice and return it, along with the annual renewal fee to the board. This administrative regulation further establishes, pursuant to KRS 311.450 and 201 KAR 25:031, an annual license renewal fee and a delinquent penalty fee.
(b) The necessity of this administrative regulation: These changes are allowed under KRS 218A.202(2), KRS 311.450 and 201 KAR 25:031.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation updates and amends the podiatry license renewal application fee and delinquent penalty fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment is necessary to set the renewal and penalty fees for licensed podiatrists.
(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 sets forth the updated fees for podiatry license renewals and delinquent payment fees. The regulatory history reflects that renewal fees were last updated in 1994 under 210 KAR 31:031.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it establishes renewal fees that fund administration of the Kentucky Board of Podiatry.
(c) How the amendment conforms to the content of the
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202(2), 311.450.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other/Explanation: N/A

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(Amendment)

201 KAR 30:050. Examination and experience requirement.

RELATES TO: KRS 324A.010, 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351


NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. 12 U.S.C. 3331-3344 through 3351 authorizes requirements for certification or licensure of appraisers of real property in federally related transactions. This administrative regulation establishes the examination and experience requirements for appraisers of real property in federally related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) A score from an examination shall no longer be acceptable for licensure after two (2) years from the date on which the applicant takes and passes the examination.

(3) An applicant shall complete all the education and experience requirements for the credential which the individual is seeking prior to being approved to sit for the national appraisal examination.

(4)(a) An individual shall submit a complete Appraiser License/Certificate Application, incorporated by reference in 201 KAR 30:030, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education required by 201 KAR 30:190;

2. Proof of completion of the required experience as established in Section 2 of this administrative regulation, including any reports identified by the board; and

3. The fee required by 201 KAR 30:060.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log.

(b) An applicant shall submit satisfactory reports, file memoranda, and other documentation requested by the board to confirm the applicant's appraisal experience.

Section 2. Required Experience. (1)(a) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

1. More than twenty (20)[fifty -(50)] percent of the general experience shall not be claimed for appraisal review or appraisal consulting assignments.

2. More than twenty (20)[fifty -(50)] percent of the general
experience shall not be claimed for appraisal of vacant land.

3. At least twenty-five (25) percent of the general experience shall include development of the cost approach, sales comparison approach, and income approach.

4. More than thirty (30) percent of the general experience shall not be claimed for restricted [use] appraisal reports.

(b) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(2) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(a) More than twenty (20) percent of the residential experience shall not be claimed for appraisal review or appraisal consulting assignments.

(b) More than twenty (20) percent of the residential experience shall not be claimed for appraisal of vacant land.

(c) At least fifteen (15) percent of the residential experience shall include development of the cost approach, sales comparison approach, and income approach.

(d) More than twenty (20) percent of the residential experience shall not be claimed for restricted [use] appraisal reports.

(3) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(a) More than twenty (20) percent of the residential experience shall not be claimed for appraisal review or appraisal consulting assignments.

(b) More than twenty (20) percent of the residential experience shall not be claimed for appraisal of vacant land.

(c) At least fifteen (15) percent of the residential experience shall include development of the cost approach, sales comparison approach, and income approach.

(d) More than thirty (30) percent of the residential experience shall not be claimed for restricted [use] appraisal reports.

More than fifty (50) percent of the required experience credit shall not be obtained for appraisal assignments without a traditional client being identified.

More than fifty (50) percent of the required experience credit shall not be obtained in a board-approved practicum course that requires students to:

(a) Produce credible appraisals that utilize an actual subject property;

(b) Perform market research containing sales analysis;

(c) Perform assignments that require problem solving skills for a variety of property types; and

(d) Apply and report the appraisal approaches in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040.

The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(7) Real property appraisal assignments submitted for experience credit shall be completed:

(a) In compliance with the requirements of USPAP as incorporated by reference in 201 KAR 30:040 and defined in KRS 324A.010 (7);

(b) Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

(c) Under the supervision of a certified general real property appraiser for experience of all property uses other than one (1) to four (4) unit residential properties.

(8) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in 201 KAR 30:030, Section 1(2), (3), or (4).

Section 3. The requirements of USPAP shall not apply to the board, its agents, and employees while conducting an appraisal review for purposes of confirming an applicant's experience pursuant to this administrative regulation.

Section 4. Incorporation by Reference. (1) "Appraiser Assignment Log", 8/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chairperson
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 10, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 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 close of business on November 2, 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 establishes the examination and experience requirements for appraisers of real property in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the examination and experience requirements for licensure or certification applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require regulations establishing the examination and experience 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 clarifying and establishing the certification and examination requirements for licensure or certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the percentages of required experience for appraisal certification and/or licensure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board establishes experience requirements for appraisers in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.035 authorizes the board to promulgate regulations to establish requirements for licensure or certification.

(d) How the amendment will assist in the effective enforcement of the requirements of USPAP.
administration of the statutes: This amendment sets forth experience requirements providing more required experience in real property mortgage lending. This increased experience requirement in the area of mortgage lending better reflects the appraisal work in the industry.

(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 have a higher percentage of general experience prior to licensure or certification in mortgage lending.

(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 be required to have more experience in mortgage lending.

(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 increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all license/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 KRS 324A.020, 324A.035.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

GENERAL GOVERNMENT CABINET
Board of Licensure for Dietitians and Nutritionists
(Amendment)

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021, 310.031(1), (2)
STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041 requires the Kentucky Board of Licensure for Dietitians and Nutritionists to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedures for submitting an application for licensure or certification and establishes requirements for institutions to be approved by the board.

Section 1. Application. (1) An Application for Licensure or Certification shall be submitted to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An Application for Licensure or Certification shall be submitted to practice nutrition after the requirements established in KRS 310.031 are met.

(3) Each Application for Licensure or Certification shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

(4) Each application shall be signed by the applicant.

(a) Each application to practice dietetics shall include:

1. A copy of the applicant's current registration card issued by the Commission of Dietetic Registration; or

2. A letter indicating successful completion of the registration examination.

(b) An Academy of Nutrition and Dietetics membership card shall not constitute compliance with paragraph (a) 1. of this subsection.

(5) Each application to practice nutrition shall include a certified copy of the applicant's official master's transcript.

(6) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall submit a complete Verification of Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently or has formerly been licensed or registered.

Section 2. Approved Programs. (1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

(a) Communication;

(b) Counseling;

(c) Physical and biological sciences;

(d) Social sciences;

(e) Research;

(f) Food composition;

(g) Nutrient metabolism;

(h) Food systems management;

(i) Nutrition therapy;
(j) Lifecycle nutrition; and 
(k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

(a) Food sources of nutrients;
(b) Physiological and chemical processes of digestion, absorption, and metabolism;
(c) Nutrient needs throughout the life cycle;
(d) Nutrition assessment processes;
(e) Pathophysiology of disease states;
(f) Medical nutrition therapy;
(g) Nutrient needs in exercise and fitness; and
(h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicum, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

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

(a) "Application for Licensure or Certification", July 2015[April, 2014]; and
(b) "Verification of Licensure in Other Jurisdictions", July 2015[February, 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professionals, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AVA EAVES, Board Chairperson
APPROVED BY AGENCY: September 15, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2015, at 10:00 a.m. at Division of Occupations and Professionals, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professionals, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the application process and requirements to be licensed or certified by the board.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the application process and requirements to be licensed or certified by the board.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will advise prospective credential holders of the application process and requirements to be licensed or certified by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment only changes the form to be submitted by an applicant.
(b) The necessity of the amendment to this administrative regulation: KRS 13A.110 requires all forms required to be submitted by an agency to be incorporated into a regulation.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will update the form and make for an easier application to be submitted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month.

(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: An applicant will have to submit the new form as part of the application process to verify the applicant satisfies the requirements to be licensed or certified.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated with the amendment to this regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant will be issued a license, certification, or both by the board.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Dietitians and Nutritionists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), (2), (6).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure for Dietitians and Nutritionists
(Revision)

201 KAR 33:020. Renewals.

RELATES TO: KRS 310.041
STATUTORY AUTHORITY: KRS 310.041, 310.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050(1) requires the board to promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes procedures for annual renewal of licenses.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, submit a completed Renewal Application and pay to the board the renewal fee established by 201 KAR 33:010, Section 2, for the renewal of the license or certificate.

(2) If a license or certificate is not renewed before November 1 of each year, it shall expire.

(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his or her license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010, Section 2.

(2)(a) A licensee or certificate holder may continue to practice during the sixty (60) day grace period.[3]

(b) Upon request of the employer, a licensee or certificate holder practicing in accordance with paragraph (a) of this subsection shall present evidence of a valid pre-existing license or certificate.

(3) A person requesting renewal of a certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation as set forth by KRS 310.050(4), a licensee or certificate holder shall no longer be eligible to practice in the commonwealth.[5]

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate, which has been automatically revoked due to failure to renew, shall be reinstated if the licensee or certificate holder has:

(1) Submitted a complete Reinstatement Application;

(2) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(3)[2] Documented that he or she has complied with the continuing education requirements established by 201 KAR 33:030.

Section 5. Address. (1) A licensee shall submit a current address to the board office by letter within thirty (30) days of an address change.

(2) The letter shall include the licensee[s] name, new address, phone number, and license number.

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

(a) "Renewal Application", July 2015; and

(b) "Reinstatement Application", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AVA EAVES, Board Chairperson
APPROVED BY AGENCY: September 15, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing should notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the renewal process for current and former credential holders.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the application process and requirements to be licensed or certified by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will advise prospective credential holders of the application process and requirements to be licensed or certified by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment only changes the form to be submitted by an applicant.

(b) The necessity of the amendment to this administrative regulation: KRS 13A.110 requires all forms required to be submitted by an agency to be incorporated into a regulation.

AVANCES
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How the amendment will assist in the effective administration of the statute: The amendment will update the form and make for an easier application to be submitted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 22 Certified Nutritionists, 1,289 Licensed Dietitians, and 45 Dual Licensed/Certificate holders.

(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: An applicant will have to submit the new form as part of the application process to verify the applicant satisfies the requirements to be licensed or certified or both.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant will be issued a license, certification, or both by the board.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Licensure for Dietitians and Nutritionists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), (2), (6).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

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

GENERAL GOVERNMENT CABINET
Board of Licensure for Dietitians and Nutritionists

(1) (a) The annual continuing education compliance period shall extend from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license or certificate for the next licensure or certification period, a licensee or certificate holder shall have earned fifteen (15) hours of approved continuing education during the compliance period.

(c) A person who is either licensed as a dietitian or certified as a nutritionist, or who is both a licensed dietitian and certified nutritionist, shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of a license or certificate for the next licensure period.

(2) An initial licensee or certificate holder shall be exempt from the continuing education requirements for the first license or certification renewal.

(3) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(4) It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.

(5) For purposes of the audit set forth in subsection (8)(a) of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept shall include:

(a) Certificates of attendance for the prior-approved continuing education;

(b) Transcripts for academic coursework;

(c) Reprints of journal articles published; or

(d) Proof of attendance, description of activity, and professional qualifications of the presenter for continuing education activities.

(6) Each licensee or certificate holder shall sign a statement on the Renewal Application form indicating compliance with the continuing education requirements. A license or certificate shall not be renewed without this sworn statement.

(7) A certified nutritionist shall submit a completed Continuing Education Submission Form for Certified Nutritionists Only.

(b)(a) The board shall audit at least fifteen (15) percent of licensees’ or certificate holders’ continuing education records each year.

(b) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board. The board’s determination shall be based on:

1. Disciplinary action against the licensee; or

2. Question of the validity of the continuing education credit.

(f) Falsifying reports, records, or other documentation relating
to continuing education requirements shall result in formal disciplinary action.

(9)[(a)] A document that reflects a continuing valid registration with the Commission on Dietetic Registration shall constitute proof of compliance with the continuing education requirement by a person licensed as a dietitian or certified as a nutritionist.

(b) A membership card shall not constitute compliance with paragraph (a) of this subsection.

Section 2. Approved Continuing Education Activities. (1) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar, or lecture that [which] has been approved by the board.

(2) Criteria for subject matter.

(a) Subject matter for continuing education hours shall reflect the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer.

(b) Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth.

(c) The following areas shall be appropriate subject matter for continuing education credit if they are directly related to the practice of dietetics or nutrition:

1. Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management, and behavioral and social sciences to achieve and maintain people's nutritional health;
2. Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting; or
3. Management or quality assurance of food and nutritional care delivery systems.

(3) Standards for approval of continuing education programs and activities. A continuing education activity shall be approved if it:

(a) Constitutes an organized program of learning, including a workshop or symposium, which contributes directly to the professional competency of the licensee or certificate holder;
(b) Pertains to subject matters that relate integrally to the practice of dietetics or nutrition; and
(c) Is conducted by individuals who have education, training, and experience in the subject matter of the program.

(4) Academic coursework.

(a) Coursework shall be eligible for credit if it:

1. Has been completed at a U.S. regionally accredited college or university; and
2. Is beyond entry-level dietetics;

(b) One (1) academic semester credit shall equal fifteen (15) continuing education hours.

(c) One (1) academic quarter credit shall equal ten (10) continuing education hours.

(d) An audited class shall equal eight (8) continuing education hours for a semester or five (5) continuing education hours for a quarter.

(5) Scholarly publications.

(a) A publication shall be approved if it:

1. Is published in a refereed professional journal or other publication; and
2. Relates to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research.

(b) Continuing education credit hours for authorship of a scholarly publication shall be reported using the following guidelines:

1. Authorship.
   a. A senior author shall be reported if the author is the first of two (2) or more authors listed.
   b. A co-author shall be reported if the author is the second of two (2) authors listed.
   c. A contributing author shall be reported for all but the senior of three (3) or more authors.
   2. For the publication of a research paper, a licensee shall receive continuing education credit of:
      a. Ten (10) hours if he or she is the single author;
      b. Eight (8) hours if he or she is the senior author;
      c. Five (5) hours if he or she is a co-author; or
      d. Three (3) hours if he or she is a contributing author.

3. For the publication of a technical article, a licensee shall receive continuing education of:
   a. Five (5) hours if he or she is the single author;
   b. Four (4) hours if he or she is the senior author;
   c. Three (3) hours if he or she is a co-author; or
   d. Two (2) hours if he or she is a contributing author.

4. For the publication of a research paper, a licensee shall receive one (1) hour of continuing education credit.

5. For the publication of an abstract, a licensee shall receive continuing education credit of:
   a. Two (2) hours if he or she is the single author; or
   b. One (1) hour if he or she is a co-author.

(6) Poster sessions.

(a) Continuing education credit shall be approved for attending juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section upon submission of the documentation required in paragraph (c) of this subsection.

(b) One (1) hour of continuing education credit shall be allowed for each hour of posters reviewed not to exceed three (3) hours in a continuing education year.

(c) The following documentation shall be submitted for approval of continuing education credit for attending juried poster sessions:

1. Certificate of attendance or completion indicating:
   a. The date of the session;
   b. The number of hours requested;
   c. The objectives of the session; and
   d. The session provider;
2. An agenda or outline of the session;
3. A program, flyer, or brochure describing the poster session;
4. Handouts from the poster session.
5. Exhibits.

(a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section.

(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.

(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:

1. Date;
2. Provider;
3. Timeline; and
4. Content of the exhibits.

(8) Exhibits.

(a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section.

(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.

(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:

1. Display of the exhibits;
2. The number of hours requested;
3. The objectives of the session; and
4. The session provider.

2. Dietetics-related;
3. Formalized or structured experiences; and
4. Sponsored by a U.S. regionally accredited college or university of an institution accredited or approved by the Joint Commission on Accreditation of Healthcare Organizations.
Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) A person seeking prior approval of a course, program, or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity.

(2) The application shall state the:
(a) Dates;
(b) Subjects offered;
(c) Objectives for the activity;
(d) Total hours of instruction; and
(e) Names and qualifications of speakers.

(3) The board shall approve or deny timely and complete applications before the commencement of the activity.

(4) Review of programs.
(a) The board may monitor and review any continuing education program already approved by the board.
(b) Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

(5) Programs pertaining to the following subject areas shall require preapproval by the board:
(a) Experiential skill development, which shall be limited to fifteen (15) hours;
(b) Independent learning programs that are sponsored and related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to ten (10) hours;
(c) Study groups involving nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to ten (10) hours;
(d) Professional reading of journal articles related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to three (3) hours.

Section 4. Subsequent Approval of Continuing Education Activities. (1)(a) Individual or group educational activities for which programs provided or sponsored have not requested continuing education hour approval prior to the date of the activity may be approved by the board for continuing education credit.
(b) An activity that has received prior approval shall not be submitted on a subsequent approval basis.

(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended:
(a) Dates;
(b) Subjects offered;
(c) Learner educational objectives for the activity and anticipated outcomes;
(d) Total hours of instruction;
(e) Names and qualifications of speakers;
(f) A timing outline, including time spent for registration, introductions, welcomes, and coffee and meal breaks; and
(g) The number of continuing education hours requested.

(3) A request for approval of a continuing education program based on:
(a) A program that does not require preapproval shall be submitted within sixty (60) days of completion;
(b) Authorization of a publication shall be submitted within six (6) months of the date of publication; and
(c) Academic coursework shall be submitted within the licensure or certification year of the course completion date.

(4) Documentation of attendance at a workshop, seminar, or lecture related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research that has not been approved by the Commission on Dietetic Registration shall be submitted within sixty (60) days of attendance.

(a) An activity that has not received prior approval may be submitted by individuals on a subsequent approval basis with rationale demonstrating continuing education value.

Section 5. Provider Preapproval. (1) A provider of a continuing education program seeking to obtain prior approval from the board for continuing education certification shall provide the following documentation to the board not less than sixty (60) days prior to the event:
(a) Dates;
(b) Subjects offered;
(c) Objectives for the activity;
(d) Total hours of instruction; and
(e) Names and qualifications of speakers.

(2) The board shall approve or deny timely and complete applications before the commencement of the activity.

(3) Review of programs.
(a) The board may monitor and review any continuing education program already approved by the board.
(b) Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

Section 6. Appeals Procedure. (1) A licensee or certificate holder may appeal decisions regarding continuing education by filing a written appeal.

(a) An appeal shall be sent to the board within thirty (30) calendar days after notification of denial and shall be considered by the board at its next scheduled meeting.

Section 7. Waiver of Continuing Education. (1) A licensee or certificate holder who is medically disabled or ill shall be granted:
(a) A waiver of the continuing education requirements; or
(b) An extension of time within which to complete continuing education requirements or make required reports.

(2) A written request for waiver or extension of time shall be:
(a) Submitted by the licensee or certificate holder; and
(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of the minimum continuing education requirements or extensions of time to complete them shall not be granted for more than one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or certificate holder shall reapply for further waiver or extension.
Section 8. Continuing Education Requirements for Retired or Inactive Licensees. (1)(a) A licensee who holds an inactive license is not required to obtain continuing education.

(b) Upon application to return to active status, the licensee shall present evidence that the licensee has fulfilled the continuing education requirements for the two (2) year period immediately prior to the application for reinstatement.

(2)(a) A retired licensee is not required to obtain continuing education.

(b) Upon application to return to active status, the licensee shall present evidence that the licensee has fulfilled all past-due continuing education requirements.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AVA EAVES, Board Chairperson
APPROVED BY AGENCY: September 15, 2015

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2015 at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the continuing education requirements of a credential holder and protects the public.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides a form to assist certified nutritionists to complete to document continuing education units obtained in a certification year.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate a form into the regulations as required by KRS 13A.110.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in satisfying the continuing education requirement for certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 22 Certified Nutritionists, 1,289 Licensed Dietitians, and 45 Dual Licensed/Certificate holders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A Certified Nutritionist will be required to submit the form when time for renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only new cost associated to the amendment relates to the new created continuing education requirements for the new registrants and licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A Certified Nutritionist will be placed on notice of which form regarding continuing education must be submitted to the board.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Dietitians and Nutritionists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), (9).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(4) 201 KAR 35:020. Fees.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination and oral examinations which applicants for certification shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate an administrative regulation establishing an initial registration, certification, or licensure fee and renewal fee. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the Application for a Licensed Clinical Alcohol and Drug Counselor, Licensed Clinical Alcohol and Drug Counselor Associate, Certified Alcohol and Drug Counselor, or Registered Alcohol and Drug Peer Support Specialist [Certification as an Alcohol and Drug Counselor] shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application for Certification as an Alcohol and Drug Counselor shall lapse [and the fee shall be forfeited if the application packet is not completed within one (1) year from the date it is filed with the board office.]

(4) (a) If an approved applicant does not successfully complete the examination, required by the board for certification within two (2) years from the date the original application form is filed with the board, the applicant shall update and refile the application for Certification as an Alcohol and Drug Counselor prior to sitting for the examination again.

(b) The fee for refilling the application form shall be twenty (20) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the examinations required by the board through December 31, 2008:

(1) The fee for the written examination shall be $100.

(2) The fee for the oral examination shall be $125.

(b) In the event the oral examination is rescheduled at the request of the applicant, a twenty-five (25) dollar fee shall be paid prior to rescheduling the examination.

(c) The fee for retaking either portion of the examination shall be the same fee established in subsections (1) and (2) of this section, and shall accompany the Application for Retake examination.

(3) The fee for the comprehensive examination offered by the International Certification and Reciprocity Consortium by paying the fees established in Section 3 of this administrative regulation.

Section 3. Comprehensive Examination Fee. (1) (a) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $150. The fee for retaking the comprehensive examination shall be $150.

(b) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $200.[(c) The fee for retaking the comprehensive examination shall be $200.

(c) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $200. The fee for retaking the comprehensive examination shall be $150.

Section 3. Credentialing[4. Initial Certification] Fee. (1) (a) The registration fee for an alcohol and drug peer support specialist shall be $100.

(b) The initial certification fee for a certified alcohol and drug counselor shall be $200.[(c) The initial certification fee shall be $200 for an applicant for certification.

(c) The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be $300.

(d) If the applicant successfully completes all requirements for registration, certification, or licensure, the license fee established in subsection (1) of this section shall cover credentialing[certification] for the initial three (3) year period.

Section 4.[5] Renewal Fees and Penalties. (1) (a) A registration, certificate, or license not renewed within ninety (90) days after the holder’s renewal date shall be deemed cancelled in accordance with KRS 309.083(2).

(b) A person holding a cancelled registration shall not use the title “registered alcohol and drug peer support specialist” or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(2) A person holding a canceled [cancelled] certificate shall not use the title “certified alcohol and drug counselor” or hold himself or herself out as a certified alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(d) A person holding a canceled license shall not use the title “licensed clinical alcohol and drug counselor” or hold himself or herself out as a licensed clinical alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(e) A person holding a canceled license as a licensed clinical alcohol and drug counselor associate shall not use the title “licensed clinical alcohol and drug counselor associate” or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

(2) The following fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewal:

(a) The renewal fee for registration shall be $100 for a three (3) year period, and shall accompany the Renewal Application.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $150 for registration for a three (3) year period.

(c) The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the Renewal Application.

(d) The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the Renewal Application.

(e) The renewal fee for licensure shall be $300 for a three (3) year period, and shall accompany the Renewal Application.

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Section 5.[1] Reinstatement of a Canceled Registration, Certificate, or Licensure. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:
(a) Submitting a completed Reinstatement Application;
(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of ten (10) hours of continuing education during the one (1) year period; and
(c) Payment of a $200 reinstatement fee for registration for a three (3) year period.

(2) A canceled certificate may be reinstated within one (1) year of the anniversary date of issue of renewal by:
(a) Submitting a completed Reinstatement Application;
(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and
(c) Payment of a $300 reinstatement fee for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:
(a) Submitting a completed Reinstatement Application;
(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and
(c) Payment of a $400 reinstatement fee for licensure for a three (3) year period.

Section 6.[2] Duplicate Credential/Certificate and ID Card Fees. (1) The fee for a duplicate credential/certificate shall be twenty (20) dollars.

(2) The fee for a duplicate ID card shall be ten (10) dollars.

Section 7.[3] Inactive Status Fee. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license [certificates] enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3) The fee for reactivation of a registration shall be one hundred ($100) for a three (3) year period commencing on the date the board approves the application for reactivation.

(4) The fee for reactivation of a certificate shall be $200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(5) The fee for reactivation of a license shall be three hundred ($300) for a three (3) year period commencing on the date the board approves the application for reactivation.

Section 8.[4] Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be defined as an individual or entity that provides a program of continuing education to continuing education sponsor holders which has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be $250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of $150.

(6) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.
regulation: The amendment removes the oral examination fee since the oral examination is no longer administered. It also establishes fees associated with the registration of peer support specialists, and licensure of alcohol and drug counselors and alcohol and drug counselor associates.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish fees for licensure and other services provided by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statute: This regulation will notify the credential holders and public of the fees, and provide funding for the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since no applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(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: An application and credential holder shall pay a fee associated with the credential or services sought.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation establishes new fees and increases other fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and credential holders on clear notice of the fees associated with their credential and services provided.

(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 and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is one increase in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish new fees or directly or indirectly increase any fees. The only increase is the comprehensive examination fee for certification which is $150 to $200 because of an increase in the fee charged by the International Certification and Reciprocity Consortium. The regulation also establishes new fees associated with the new credentials for the registration of peer support specialists, and licensure of alcohol and drug counselors and alcohol and drug counselor associates. The new fees for the registration of peer support specialists are $100 less than those to be assessed for the certification of an alcohol and drug counselor. The new fees for the licensure of alcohol and drug counselors and alcohol and drug counselor associates are $100 more than those to be assessed for the certification of an alcohol and drug counselor.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (12), 309.085.

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? The board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

(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 board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

(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. None.


RELATES TO: KRS 309.081
STATUTORY AUTHORITY: KRS 309.0813(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for credential holders [certified alcohol and drug counselors]. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A [credential holder [an alcohol and drug counselor]] shall:

(a) Advance and protect the welfare of the client;

(b) Respect the rights of a person seeking assistance; and

(c) Make reasonable efforts to ensure that services are used appropriately.

(2) If an alcohol and drug peer support specialist is employed by a facility or credential holder from whom the peer support specialist received services as a client, the peer support specialist’s supervisor shall clearly define the relationship and boundaries of the peer support specialist’s employment position.

(3) A [credential holder [an alcohol and drug counselor]] shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of:

1. Race;

2. Gender;

3. Age;

4. Sexual preference or orientation;

5. Religion; or

6. Other.

7. Other.

8. Other.
6.14 National origin:
(b) Exploit the trust and dependency of a client or client of the facility where the counselor provides alcohol and drug counseling or any other service or where the peer support specialist provides services;
(c) Engage in a dual relationship with a client or client of the facility where the counselor provides alcohol and drug counseling or any other service or where the peer support specialist provides services, including a social, business, or personal relationship, that may:
1. Impair professional judgment;
2. Incur a risk of exploitation of the client; or
3. Otherwise violate a provision of this administrative regulation.
If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur. A credential holder shall not engage in a romantic relationship or sexual intimacy with a current member of a client's immediate family or client's romantic partner.
(d) Engage in a sexual relationship with a current client or current client of the facility where the counselor provides alcohol and drug counseling or with a former client or former client of the facility where the counselor provides alcohol and drug counseling for two (2) years following the termination of therapy, or use the professional relationship with a client or current client of the facility where the counselor provides alcohol and drug counseling to further an institutional or personal interest;
(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;
(g) Fail to assist a person in obtaining other therapeutic service if the counselor is unable or unwilling, for an appropriate reason, to provide professional help;
(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;
(i) Videotape, record, or permit third-party observation of a therapy session without having first obtained written informed consent from the client;
(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or ethical proceeding; or
(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A credential holder[An alcohol and drug counselor] shall respect and guard the confidence of each individual client in any setting and through any means of communication.
(2) A credential holder[An alcohol and drug counselor] shall not disclose a client confidence except:
(a) As mandated, or permitted by law;
(b) To prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the counseling, at which the alcohol and drug counselor is a defendant; or
(d) In accordance with the terms of a written informed consent agreement.
(3) An alcohol and drug counselor may use client or clinical material in teaching, writing, and public presentations if:
(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect client identity and confidentiality.
(4) A credential holder shall maintain a client's record for no less than seven (7) years from termination of services with the client.
(5) A credential holder[An alcohol and drug counselor] shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. A credential holder[An alcohol and drug counselor] shall assign credit to all who have contributed to the published material and for the work upon which publication is based. A credential holder[An alcohol and drug counselor] shall:
(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principal[principal] contribution to a publication shall be identified as the first listed;
(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance;
(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.

Section 4. Professional Competence and Integrity. A credential holder[An alcohol and drug counselor] shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:
(1) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;
(2) Impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of alcohol and drug counseling or peer support services;
(3) Refusing to comply with an order issued by the board; or
(4) Failing to cooperate with the board by not:
(a) Furnishing in writing a complete explanation to a complaint filed with the board;
(b) Appearing before the board at the time and place designated; or
(c) Properly responding to a subpoena issued by the board.
(5) A credential holder[An alcohol and drug counselor] who is aware of conduct by another credential holder[certified alcohol and drug counselor] that violates this code of ethics shall report that conduct to the Kentucky Board of[Certification of] Alcohol and Drug Counselors.
(6) A credential holder[An alcohol and drug counselor] shall comply with all the policies and procedures of the facilities where a credential holder[he] is employed. If there is conflict with the policies or procedures of the facility and this code of ethics, the credential holder[he] shall report this conflict to the Kentucky Board of[Certification of] Alcohol and Drug Counselors.

Section 5. Responsibility to a Student or Supervisee. A credential holder[An alcohol and drug counselor] shall:
(1) Be aware of his influential position with respect to a student or supervisee[and];
(2) Avoid exploiting the trust and dependency of a student or supervisee;
(3) Try to avoid a social, business, personal, or other dual relationship that could:
(a) Impair professional judgment; and
(b) Increase the risk of exploitation;
(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;
(5) Not provide counseling to:
(a) Student;
(b) Employee; or
(c) Supervisee;
(6) Not engage in sexual intimacy or contact with a:
(a) Student; or
(b) Supervisee;
(7) Not permit a student or supervisee to perform or represent oneself[himself] as competent to perform a professional service beyond his level of:
(a) Training;
(b) Experience; or
(c) Competence;
(8) Not disclose the confidence of a student or supervisee unless:
(a) Permitted or mandated by law;
Section 6. Responsibility to a Research Participant. (1) A credential holder shall:
(a) Provide a brief summary of:
(b) Be responsible for making a careful examination of ethical acceptability in planning a study;
(c) Seek the advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and
(d) Observe safeguards to protect the rights of a participant.
(2) A credential holder shall:
(a) Respect a participant's freedom to decline participation in or to withdraw from a research study at any time.
(b) Be sensitive to the possibility of diminished consent if the participant:
1. Is also receiving clinical services;
2. Has an impairment which limits understanding or communication; or
3. Is a child.
(3) A credential holder shall:
(a) Inform the participant of all aspects of the research that might reasonably affect the participant's willingness to participate; and
(b) Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and
(c) Observe safeguards to protect the rights of a participant.
(4) A credential holder shall:
(a) Be responsible for making a careful examination of ethical acceptability in planning a study;
(b) Be sensitive to the possibility of diminished consent if the participant:
1. Is also receiving clinical services;
2. Has an impairment which limits understanding or communication; or
3. Is a child.
(5) A credential holder shall:
(a) Not charge an excessive fee for service;
(b) Disclose fees to a client and supervisee at the beginning of service;
(c) Make financial arrangements with a client, third-party payor, or supervising agency that:
1. Are reasonably understandable; and
2. Conform to accepted professional practices;
(d) Not offer or accept compensation for a referral of a client;
(e) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered; and
(f) Not trade services to the client in exchange for goods or services provided by or on behalf of the client.
Section 7. Financial Arrangements. A credential holder shall:
(1) Not charge an excessive fee for service;
(2) Disclose fees to a client and supervisee at the beginning of service;
(3) Make financial arrangements with a client, third-party payor, or supervising agency that:
1. Are reasonably understandable; and
2. Conform to accepted professional practices;
(4) Not offer or accept compensation for a referral of a client;
(5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered; and
(6) Not trade services to the client in exchange for goods or services provided by or on behalf of the client.
Section 8. Advertising. (1) A credential holder shall:
(a) Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;
(b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
1. A business card;
2. An office sign;
3. Letterhead;
4. Telephone or association directory listing; or
5. Website or social media.
(b) A statement shall be considered false, fraudulent, misleading, or deceptive if it:
1. Contains a material misrepresentation of fact;
2. Is intended to or likely to create an unjustified expectation;
(c) Deletes a material fact or information.
Section 9. Environment. A credential holder shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This shall include the following:
(1) Allowance for privacy and confidentiality; and
(2) Compliance with any other health and safety requirement according to local, state, and federal agencies.
Section 10. Documentation. A credential holder shall accurately document activity with a client in a timely manner.
Section 11. Interprofessional Relationships. A credential holder shall:
(1) Treat a colleague with respect, courtesy, and fairness; and
(2) Cooperate with a duly constituted professional ethics committee and promptly supply necessary information unless constrained by the demands of confidentiality.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: June 29, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notice 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 close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does:
(b) The necessity of this administrative regulation: The
necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the expected ethical behavior of a credential holder and protect the public seeking alcohol and drug related services.

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

(a) How this amendment will change this existing administrative regulation: The amendments will hold the new credentials established through the legislation enacted during the 2015 legislative session. They also will prohibit sexual relationships with current and former clients.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a code of ethics for a credential holder with a registration or license issued by the board. They are also necessary to protect a peer support specialist who was a former client of a facility or credential holder and is now employed by the same.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a code of ethics for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications and revenues vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the code of ethics or be subject to possible disciplinary action.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the ethical standards expected of them by the board.

(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 and applicants.

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

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

There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (2).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

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

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)
STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.085(1)(b) authorizes the board to require a credential holder to promulgate an administrative regulation requiring certified alcohol and drug counselors to complete continuing education requirements as a condition of renewal [of certification]. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions.
(1) “Academic course” means a course offered by an accredited postsecondary institution beyond the undergraduate level that:

(a) An alcohol and drug counseling course, designated by title or content, or

(b) An academic course, relevant to alcohol and drug counseling.

(2) “Approved” means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.

(3) “Continuing education hour” means fifty (50) clock minutes of participating in a continuing educational experience.

(4) “Program” means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

(5) “Provider” means an organization approved by the Kentucky Board of Certification for Certified Alcohol and Drug Counselors for providing continuing education programs.

(6) “Relevant” means having content applicable to the practice of alcohol and drug counseling in accordance with the
Section 2. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours being on ethics.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a certified clinical addiction specialist during the three (3) year certification period for renewal with at least three (3) continuing education hours being on ethics.

(d) A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a certified clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a certificate. A continuing education requirement shall determine whether a specific continuing education program that the program:

(a) Has been approved by the board; or
(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not pre-approved as established in subsection (3) of this section, the certificate holder may apply for board approval by providing the information required by Section 4(5) of this administrative regulation.

(5) A certificate holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(3) of this administrative regulation, or be approved by one (1) of the following boards:

(a) Kentucky Board of Social Work;
(b) Kentucky Board of Licensure of Marriage and Family Therapists;
(c) Kentucky Board of Licensed Professional Counselors;
(d) Kentucky Board of Licensure for Pastoral Counselors;
(e) Kentucky Board of Examiners of Psychology; or
(f) Kentucky Board of Licensure for Occupational Therapy.

Section 2.4 Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by:

(a) Attending a continuing education program that has prior approval by the board;
(b) The completion of appropriate academic coursework;
(c) Other alternative methods approved by the board in accordance with subsection (5) of this section;
(d) The required continuing education hours for a credential holder shall be not less than fifty (50) percent face to face of the required continuing education hours.

(3) Attendance at continuing education programs automatically approved by the board. A program provided, approved, or sponsored by any of the following providers and that is relevant to the practice of alcohol and drug counseling shall be deemed to be approved without further review by the board and shall be exempt from the program fee established in 201 KAR 35:020.

Section 9:

(a) The National Association of Addiction Professionals (NAADAC) and its member boards;
(b) The International Certification and Reciprocity Consortium (ICRC);
(c) The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;
(d) The Kentucky School of Alcohol and Drug Studies;
(e) An Addiction Technology Transfer Center (ATTC); and
(f) State or United State Regional Addiction Training Institute;

or

(a) Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA).

(4)(a) Academic coursework. An academic course, as defined in Section 1(1) of this administrative regulation, shall not require board review or approval.

(b) A general education course, or elective designated to meet academic undergraduate degree requirements, shall be applicable for credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equating fifteen (15) continuing education hours.

(5) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. A program from one of the following sources shall be reviewed by the board to determine whether or not the program complies with the requirements of Section 3(2)(4)(2) of this administrative regulation:

(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (3) of this section;
(b) A program or academic course presented by the certificate holder;
(c) A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction.

1. Credit shall not be issued for repeated instruction of the same course;
2. A relevant publication in a professionally recognized or juried publication authored by the certificate holder.

Section 3.4 Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4(2) of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;
(b) Pertains to subject matter relating to alcohol and drug counseling;
(c) Enhances the professional competence of the certificate holder by:

1. Refreshing knowledge and skills; or
2. Educating on a new topic or subject; and
(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensures or certifications, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board.
Section 4. [5] Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.
   (2) The following information shall be submitted for board review of a program:
   (a) A published course or seminar description;
   (b) The name and qualifications of the instructor;
   (c) A copy of the program agenda indicating hours of education;
   (d) Number of continuing education hours requested;
   (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
   (f) Application for continuing education credits approval.

Section 5. [6] Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application incorporated by reference in 201 KAR 35:020[58] shall, and pay the provider fee established in 201 KAR 35:020, Section 9.
   (2) An approved sponsor of continuing education shall be allowed to advertise the program as pre-approved to meet the continuing education requirements for [credential][certification] renewal.
   (3) (a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.
   (b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. [7] Responsibilities and Reporting Requirements of [credential][certification] Holder; Audit. (1) (a) During the [certification] renewal period, the board shall review at least [require up to] fifteen (15) percent of all [credential holders][certificates] to furnish documentation supporting[62] the completion of the appropriate number of continuing education hours through a random audit process.
   (b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the [credential holder] upon completion of the audit process.
   (c) Verification of continuing education hours shall not otherwise be reported to the board.
   (2) A [credential][certification] holder shall:
   (a) Be responsible for obtaining the required continuing education hours;
   (b) Identify personal continuing education needs and seek activities that meets those needs;
   (c) Seek ways to integrate new knowledge, skills, and activities;
   (d) Select approved activities by which to earn continuing education hours;
   (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 2(4)[24] of this administrative regulation;
   (f) Document attendance, participation in, and successful completion of continuing education activity; and
   (g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.
   (3) The following items may be used to document continuing education activity:
   (a) Transcript;
   (b) Certificate;
   (c) Affidavit signed by the instructor;
   (d) Receipt for the fee paid to the sponsor; or
   (e) Written summary of experiences that are not formally or officially documented otherwise.
   (4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:
   (a) Refusal to renew [credential][certification];
   (b) Suspension of [credential][certification]; or
   (c) Revocation of [credential][certification].

Section 7. [8] Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1[2] of this administrative regulation shall not be carried forward or into the immediately following certification renewal period.

Section 8.[9] Appeal of Denial of Continuing Education Hours by the Board. (1) If an application for approval of continuing education hours is denied, the [credential holder] shall have the right to appeal the board's decision.
   (2) An appeal shall be:
   (a) In writing;
   (b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
   (c) Conducted in accordance with KRS Chapter 13B.

Section 10. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
   (a) Medical disability of the [credential holder];
   (b) Illness of the [credential holder] or of an immediate family member; or
   (c) Death or serious injury of an immediate family member.
   (2) A written request for waiver or extension of time involving medical disability or illness shall be:
   (a) Submitted by the [credential holder] and
   (b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.
   (3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
   (4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the [credential holder] shall reapply for the waiver or extension.

Section 9. [10] Continuing Education Requirements for Reinstatement or Reactivation of a [credential][certification]. (1) A person requesting reinstatement of [certificate][certification] or licensure shall:
   (a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
   (b) 1. Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification or licensure.
   2. Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification or licensure.
   (2) A person requesting reinstatement of a registration shall:
   (a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
   (b) 1. Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.
   2. Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.
   (3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1[2] of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. [11] Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Continuing Sponsor Application Form", [U(2)008][13]
   (b) "KBADC Form 18: Continuing Education Program Application", June 2015. [Continuing Education Program]
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

Application Form* (2000):

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296 ext. 222, Monday through Friday, 8:30 a.m. to 5:00 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the continuing education requirements of a credential holder and protect the public seeking alcohol and drug related services.

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

(a) How the amendment will change this existing administrative regulation: The amendments will hold the new credentials established through the legislation enacted during the 2015 legislative session and the suicide continuing education requirement enacted in 2013.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a continuing education requirement for a credential holder with a registration or license issued by the board.

(c) How the amendment conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only new cost associated to the amendment relates to the new created continuing education requirements for the new registrants and licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the continuing education requirements expected of them by the board.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendment.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (2).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for
subsequent years? None

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

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

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(AMENDMENT)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8)
STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083, 309.0831, 309.0832, 309.0833(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083, 309.0831, 309.0832, and 309.0833(4) requires that applicants for certification as an alcohol and drug counselor complete a specific number of classroom hours.

This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall complete sixty (60) classroom hours which shall include:
(a) Sixteen (16) hours of interactive, face-to-face training in ethics;
(b) Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
(c) Ten (10) hours of advocacy training;
(d) Ten (10) hours of training in mentoring and education; and
(e) Ten (10) hours of training in recovery support.

(2) Certification. An applicant seeking certification as an alcohol and drug counselor shall complete the 270 classroom hours of board-approved curriculum. This administrative regulation identifies the areas of study that will satisfy the requirement.

(a) Understanding addiction;
(b) Treatment knowledge;
(c) Application to practice;
(d) Professional readiness;
(e) Clinical evaluation;
(f) Case management;
(g) Crisis intervention;
(h) Client education;
(i) Referral;
(j) Counseling;
(k) Reports and recordkeeping; and
(l) Consultation.

(2) A minimum of sixty (60) classroom hours which shall include:
(a) Sixteen (16) hours of interactive, face-to-face training in ethics, which shall be:
(1) Screening;
(2) Intake;
(3) Client orientation;
(4) Assessment;
(5) Treatment planning;
(6) Counseling;
(7) Case management;
(8) Crisis intervention;
(9) Client education;
(10) Referral;
(11) Reports and recordkeeping; and
(12) Consultation.

(3) A minimum of 125 hours of the total 270 hours shall be specific to alcohol or drug treatment.

(4) A minimum of six (6) hours of the total 270 hours shall be interactive, face-to-face training related to counseling.

(5) A minimum of three (3) hours of the total 270 hours shall be specific to domestic violence.

(6) An applicant seeking licensure as a licensed clinical alcohol and drug counselor shall complete 180 classroom hours of curriculum which are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:
(a) Understanding addiction;
(b) Treatment knowledge;
(c) Application to practice;
(d) Professional readiness;
(e) Clinical evaluation;
(f) Treatment planning;
(g) Referral;
(h) Counseling;
(i) Client education;
(j) Documentation; and
(k) Professional and ethical responsibilities.

(7) Professional and ethical responsibilities.

(a) 1. Understanding addiction;
(b) 2. Treatment knowledge;
(c) 3. Application to practice;
(d) 4. Professional readiness;
(e) 5. Clinical evaluation;
(f) 6. Treatment planning;
(g) 7. Referral;
(h) 8. Service coordination;
(i) 9. Counseling;
(j) 10. Client, family, and community education;
(k) 11. Documentation; and
(l) 12. Professional and ethical responsibilities.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:
(a) Is an organized program of learning;
(b) Covers an area listed in Section 1 of this administrative regulation; and
(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as follows:
(a) A chapter in a book shall be equivalent to ten (10) classroom hours.
(b) An authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.
(c) A publication in a professional refereed journal is equivalent to fifteen (15) classroom hours.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by core area as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

(2) Appropriate documentation of the course shall include:
(a) Date;
(b) Title;
(c) Description;
(d) Sponsoring organization;
(e) Presenter and presenter’s credentials;
(f) Number of contact hours attended; and
(g) Certificates of attendance or transcript.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) *KBADC Form 5, Peer Support Specialist Verification of
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

Alcohol/Drug Training”, June 2015:
(b) “KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training”, June 2015; and
(c) “KBADC Form 11, Verification of Classroom Training”, June 2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m. Certification as an alcohol and drug counselor in the International Certification and Reciprocity Consortium shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification established in KRS 309.083.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a required education requirement for a credential holder to maintain competency in the practice.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing an education requirement for all credential holders.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m. [Certification as an alcohol and drug counselor in the International Certification and Reciprocity Consortium shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification established in KRS 309.083.]

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, and 309.0833.
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) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(c) 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.
(d) 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.
years? None.
(c) How much will it cost to administer this program for the first year? None.
(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-): Expenditures (+/-): Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:060. Complaint procedure.

RELATES TO: KRS 309.0805(1), 309.0813(6), (7), (11), (13), 309.086

STATUTORY AUTHORITY: KRS 309.0813(6), (7), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086

authorizes the board to fine, reprimand, admonish, revoke, suspend, place on probation, or restrict a credential holder and delineates the causes for which disciplinary action may be taken against a credential holder. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) “Chair” means the chairman or vice-chairman of the board.
(2) “Charge” means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the Board of Alcohol and Drug Counselors, that the administrative regulations promulgated thereunder, or another state or federal statute or regulation.
(3) “Complaint” means a written allegation of misconduct by a credential holder or another and commences a formal disciplinary proceeding pursuant to KRS 309 or 201 KAR Chapter 35, the board shall issue a prima facie violation of KRS Chapter 309 or the administrative regulations promulgated thereunder, or another state or federal statute or regulation.
(4) “Complaint screening committee” means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.
(5) “Formal complaint” means a formal administrative pleading authorized by the board, which establishes charges against a certificate holder or another and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.
(6) “Informal proceedings” means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.
(7) “Investigator” means an individual designated by the board to assist in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:
(a) May be submitted by an:
1. Individual;
2. Organization; or
3. Entity;
(b) Shall be:
1. In writing; and
2. Signed by the person offering the complaint; and
(c) May be filed by the board based upon information in its possession.
(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual’s response to the complaint.
(b) The individual shall be allowed a period of twenty (20) days from the date of the board’s notice of receipt to submit a written response.
(3)(a) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.
(b) The complainant shall have seven (7) days from receipt to submit a written reply to the response.

Section 2. [3.] Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual’s response, the complaint screening committee shall consider the individual’s response, complainant’s reply to the response, and any relevant material available and make a recommendation to the board.
(a) The names of the individuals and other identifying information shall be redacted to provide anonymity.
(b) The complaint screening committee shall recommend to the board whether there is sufficient evidence to warrant a formal investigation of the complaint.
(2) If the complaint screening committee determines there is insufficient evidence to warrant an investigation, it shall recommend that the board dismiss the complaint.

Section 3. [1.] The board may investigate complaints related to violations of this administrative regulation and may impose the following penalties on a credential holder:
(a) Restrict;
(b) Probate;
(c) Suspend;
(d) Revocate;
(e) Issue a public reprimand;
(f) Issue of a private admonishment; or
(g) Fine.

Section 4. [Results of Formal Investigation; Board Decision on Hearing] (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.
(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.
(b) If the board accepts the recommendation of the complaint screening committee that there is evidence to warrant an investigation, the board shall issue a formal complaint against the credential holder.

The board may impose any combination of the penalties in subsection (1) of this section.

(2) The board may impose any combination of the penalties in subsection (1) of this section.

Section 4. [Results of Formal Investigation; Board Decision on Hearing] (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.
(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.
(b) If the board accepts the recommendation of the complaint screening committee that there is evidence to warrant an investigation, the board shall issue a formal complaint against the credential holder.

The board may impose any combination of the penalties in subsection (1) of this section.

(2) The board may impose any combination of the penalties in subsection (1) of this section.
Section 4. If the board accepts the recommendation of the complaint screening committee that a complaint warrants a disciplinary action, the board shall issue a notice of disciplinary action and inform the credential holder:

(a) Of the specific reason for the board’s action, including:
   1. The statutory or regulatory violation; and
   2. The factual basis on which the disciplinary action is based;

(b) Of the penalty to be imposed; and

(c) That the credential holder may appeal the penalty to the board within twenty (20) calendar days of the date of the board’s notice.

A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board’s notice.

If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time for the credential holder to request an appeal.

Section 5. The issuance of a formal complaint against the respondent counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint that states clearly the charge or charges to be considered at the hearing.

The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

The formal complaint shall be processed in accordance with KRS Chapter 13B.

If the board determines that a person is in violation of KRS 309.0805(1), it shall:

1. Order the individual to cease and desist from further violations of KRS 309.0805(1); or

2. Initiate action in Franklin Circuit Court pursuant to KRS 309.0813(13) for injunctive relief to stop the violation of KRS 309.0805(1).

Section 6. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 7. Revocation of Probation. (1) If the board moves to revoke the probation of a credential holder, the board shall issue a notice of revocation and inform the credential holder:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated;

(c) That the credential holder may appeal the revocation to the board within fifteen (15) days of the date of notification of revocation; and

(d) That a copy of the private written admonishment shall be placed in the permanent file of the credential holder.

(2) A written request for an administrative hearing shall be filed with the board within fifteen (15) calendar days of the date of the board’s notice.

(3) If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time for the credential holder to request an appeal.

Section 8. Any request for an administrative hearing shall be sent to the Board of Alcohol and Drug Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Notice of Service of Process. A notice required by KRS Chapter 309 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 9. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.


(b) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification for Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, ext. 222, Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. No notification of intent to attend the hearing is required by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 792-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and
administrative hearing process of alleged violations brought before the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment will place the onerous on the credential holder to request an administrative hearing following discipline being brought by the board.
   (b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a complaint and administrative hearing process to address alleged violations brought before the board.
   (c) How the amendment conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.
   (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will have to request a hearing before the board.
   (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 new cost associated to the amendment related to the amendment of this administrative regulation.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will who do not desire to challenge a disciplinary action brought by the board will not bear the expense of an unwanted administrative hearing process.
(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 and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding is required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the experience and who provides supervision to not more than twelve.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.083(6), (7), (11), 309.086.

3. Estimate the effect of the administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be saved through the amendment of this regulation but there will be a saving involved.
   (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 (+/-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Amendment)


RELATES TO: KRS 309.083(4), 309.0831, 309.0832, 309.0833

STATUTORY AUTHORITY: KRS 309.0831(1), [and (3), (5), 309.083, 309.0831, 309.0832, 309.0833]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0831(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be certified[certified] KRS 309.083, 309.0831, 309.0832, and 309.0833 require (4) requires all applicants for registration as an alcohol and drug peer support specialist, certification as an alcohol and drug counselor, licensure as a clinical alcohol and drug counselor associate, or licensure as a clinical alcohol and drug counselor to have completed under[300] hours of board approved experience working with alcohol or drug dependent persons under the direct supervision from[a] certified alcohol and drug counselor who has at least two (2) years of postcertification experience or licensure as a clinical alcohol and drug counselor.[This administrative regulation establishes the standards for the accumulation of the required supervised work experience.]

Section 1. (1) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration.

[2][Definitions. (1)] “Clinical supervision” means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing services related to the twelve (12) core functions of the alcohol and drug counselor.

(2) Clinical supervisor means a certified alcohol and drug counselor who has at least two (2) years of postcertification experience and who provides supervision to not more than twelve.
(12) applicants in an individual or group setting at any one (1) time, and whose certificate is currently in good standing with the board.

(3) “Work experience” is defined as the hours spent performing the services, tasks, and reports necessary for providing counseling or intervention to a chemically dependent person or person’s significant others.

Section 2. Clinical Supervision. [4] Clinical supervision shall consist of at least 300 hours and shall include a minimum of ten (10) hours in each of the following twelve (12) core functions:
(a) Screening;
(b) Intake;
(c) Client orientation;
(d) Assessment;
(e) Treatment planning;
(f) Counseling;
(g) Case management;
(h) Crisis intervention;
(i) Client education;
(j) Referral;
(k) Records and recordkeeping; and
(l) Consultation.

(3) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:
1. Face-to-face;
2. Video conferencing; or
3. Teleconferencing.

(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(5) Clinical supervisors shall complete and submit the Supervisor's form in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor incorporated by reference in KAR 35:020, Section 10, that documents the 300 hours of supervision that has occurred during the work experience.

Section 2. Except as provided, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement.

Accumulation of Work Experience. (1) 6,000 hours of work experience shall be accumulated in a setting where chemical dependency services are routinely provided.

(2) The report shall include:
1. All supervision requirements shall:
(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation;
(b) Consist of not less than two (2) hours two (2) times a month of the practice of alcohol and drug counseling; and
(c) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. The board shall only approve the new hours of supervision if they were previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination of supervision.

(1) An applicant may substitute, for part of the work experience, a degree in a related field such as:
(a) Addictions;
(b) Counseling;
(c) Psychology;
(d) Psychiatric nursing; or
(e) Social work.

(2) Requests for substitution shall be submitted to the board along with transcripts from an accredited College or University.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and drug-related services.

(4) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling may be substituted for 4,000 hours of work experience.

(a) A master's degree or higher in a related field, may be substituted for 3,000 hours of work experience.

(b) A bachelor's degree in a related field, may be substituted for 2,000 hours of work experience.

(c) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in Section 3 of this administrative regulation.

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor.

Section 4. (1) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of the following continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend the approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twelve (12) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to insure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a Supervisor Log of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:
(a) A description of the frequency, format, and duration of supervision;
(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and
(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.
(2) The request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, or an applicant for a certificate as a certified alcohol and drug counselor, the supervisor of record shall:
(1) Review all alcohol and drug assessments and treatment plans;
(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;
(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:
(a) Be updated and revised, as needed, and submitted to the board annually;
(b) Include intended format, and goals to be accomplished through the supervisory process; and
(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;
(4) Have direct observation of the supervisee’s work at least semi-annually. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a co-therapist;
(5) Have direct knowledge of the size and complexity of the supervisee’s caseload;
(6) Limit and control the caseload as appropriate to the supervisee’s level of competence;
(7) Have knowledge of the methods and techniques being used by the supervisee; and
(8) Have knowledge of the supervisee’s physical and emotional well-being when it has a direct bearing on the supervisee’s competence to practice.

Section 10. (1) The supervisee shall:
(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and
(b) Seek consultation from the supervisor as needed in addition to a regularly-scheduled supervisory session.
(2) The supervisee shall:
(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;
(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and
(c) Report to the board an apparent violation on the part of the supervisor.

Section 11. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer’s credential and name of supervisor of record. A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.

Section 12. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of a provider who is supervised by the board.
(2) The disciplined credential holder shall be responsible for paying the fee for supervision.
(3) The supervisor shall have completed the board approved training course in supervision.
(4) The supervisor shall:
(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
(b) Meet with the disciplined credential holder and the board liaison to:
1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision approved by the board; and
4. Review the reporting requirements that shall be met during the period of supervision;
(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;
(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;
(e) Make all reasonable efforts to ensure that the disciplined credential holder’s practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;
(f) Report to the board any apparent violation on the part of the disciplined credential holder;
(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or substance use disorders counseling in a competent manner;
(h) Review and countersign assessments as needed or appropriate;
(i) Review and countersign service or treatment plans as needed or appropriate;
(j) Have direct observation of the disciplined credential holder’s
work on an as-needed basis;
(k) Have direct knowledge of the size and complexity of the disciplined credential holder’s caseload;
(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and
(m) Have knowledge of the disciplined credential holder’s physical and emotional well-being when it has a direct bearing on the disciplined credential holder’s competence to practice.
(5) The supervisor shall control, direct, or limit the disciplined credential holder’s practice as appropriate to ensure that the disciplined credential holder’s practice is competent.
(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.
(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two weeks following this meeting with a copy to the board liaison.

Section 13. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:
(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student’s work; and
(2) Be registered for practicum credit on the transcript in his or her course of study;
(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;
(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student’s work; and
(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “KBADC Form 3, Supervisory Agreement”, June 2015;
(b) “KBADC Form 4, Request to Provide Supervision”, June 2015;
(c) “KBADC Form 6, Peer Support Specialist Supervisory Agreement”, June 2015;
(d) “KBADC Form 7, Supervision Evaluation”, June 2015;
(e) “KBADC Form 8, Peer Support Specialist Verification of Supervision”, June 2015;
(f) “KBADC Form 9, Supervision Evaluation for Peer Support Specialist”, June 2015;
(g) “KBADC Form 13, Verification of Clinical Supervision”, June 2015; and
(h) “KBADC Form 14, Supervision Annual Report”, June 2015.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments expand the credential holders who are to be supervised; cap the number of supervisees that a supervisor may supervise; establish reporting requirements; and provides for the supervision of disciplined credential holders and graduate students.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.
(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will only be affected if the holder is a supervisor. The credential holder would have to go through continuing education annually to be allowed to supervise.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only costs associated with this regulation are
Question (3): The credential holders and applicants of Certification of Alcohol and Drug Counselors shall not use the initials of a registered peer support specialist while on voluntary inactive status, an individual shall continue to receive bulletins, and apply for consideration. The board’s operations are funded by fees paid by credential holders and applicants. The applicant shall be notified of the board’s decision not to grant inactive status if one (1) or more of the following conditions apply:

(a) Medical problems;
(b) Maternity or paternity;
(c) Education;
(d) Military service; or
(e) Family or personal issues.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive bulletins, newsletters, and other communications from the Kentucky Board of Alcohol and Drug Counselors. (2) The Kentucky Board of Certification of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

(a) Current home address and telephone number;
(b) Reason for request;
(c) Final date of employment in the alcohol and drug field;
(d) Anticipated date of return to employment in the alcohol and drug field; and
(e) Nonrefundable enrollment fee as established in 201 KAR 35:020, Section 7.

Section 4. Application. (1) Voluntary inactive status shall be for the credential holder who is currently not working as a peer support specialist or alcohol and drug counselor, yet plans to return to providing peer support services or alcohol and drug counseling.

Section 5. Exemptions. (1) The Kentucky Board of Certification of Alcohol and Drug Counselors establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

Section 6. TIERING. Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), 309.083, 309.0831, 309.0832, and 309.0833.

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:

Failure to notify the board prior to within thirty (30) days of returning to such employment shall constitute a violation of the
Kentucky Board of Certification of Alcohol and Drug Counselors Code of Ethics, incorporated by reference in 201 KAR 35:040, and will result in referral to the board for investigation, in accordance with the procedures outlined in the Code of Ethics and in these administrative regulations.

Section 4. Reactivation. (1) Individuals requesting reactivation of their registration, certification, or licensure status shall send a letter of request to the office of the Kentucky Board of Certification of Alcohol and Drug Counselors and shall include the following:
(a) Current home address;
(b) Current e-mail address;
(c) Description of change of circumstances allowing active participation in the field;
(d) Address of employing agency, if applicable;
(e) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and
(f) Nonrefundable reactivation fee as established in 201 KAR 35:020, Section 8(3).

(2) A request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Certification of Alcohol and Drug Counselors.

(a) The applicant shall be notified within two (2) weeks of the board’s decision.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: June 29, 2015
FILED WITH LRC: August 26, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5966.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure for a credential holder who voluntarily places oneself on inactive status.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedure for the board to be aware of the credential holders who voluntarily places oneself on inactive status.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for inactive status.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in board having knowledge of credential holders who are not currently practicing.
(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 expand the credential holders who may voluntarily place oneself on inactive status and requires the credential holder to notify the board prior to returning to the practice of alcohol and drug counseling or peer support.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a process for the new credentials regulated by the board.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in board having knowledge of credential holders who are not currently practicing.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect. None.

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

(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
Department of Fish and Wildlife Resources
(Adoption)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging, snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.

Section 1. Definitions. (1) “Angler” means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(2) “Archery equipment” means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3)[(4)](2) “Asian carp” means bighead carp, silver carp, black carp, and grass carp.

(4)(3) “Bow fishing” means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment[ad] a crossbow, or a pneumatic arrow launching device.

(5)[(3)](4) “Crossbow” means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(6)[(5)](6) “Cull” means to release a previously caught fish that an angler has kept as part of a daily creel limit and replace it with another fish of the same species.

(7) “Pneumatic arrow launching device” means a device designed to fire an arrow through the use of a compressed air cartridge.

(8)(6) “Sport fisherman” means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(2) “Temporary aquatic area” means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(8)[(9)](2) “Temporary pool” means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department’s Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove pursuant to subsection (4) of this section[subsection] shall display an international diving flag pursuant to 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) A participant who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place;

2. Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and

3. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler[A sport fisherman] shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers[sport fishermen] in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the
trotline. (7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing [trotline][trotlines], jug line[jugs], or setline[setlines] shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;
(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;
(c) In any lake less than 500 surface acres owned or managed by the department, except:
   1. Ballard Wildlife Management Area lakes, Ballard County;
   2. Peal Wildlife Management Area lakes, Ballard County; and
   3. Swan Lake Wildlife Management Area lakes, Ballard County;
   (d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:
      1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;
      2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel along the southern part of Wabash Island from the fixed weir dam to the first dike;
      3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;
      4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;
      5. McAlpine Dam downstream to the K & I railroad bridge;
      6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;
      7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall;
      8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9)(a) The Taylorsville Lake blue and channel catfish limits shall be an aggregate daily creel limit of fifteen (15).
(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(10) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits pursuant to 301 KAR 1:201.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:
(a) Poison;
(b) Electrical devices;
(c) Firearms; or
(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:
(a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as established in subsections (7) and (9) of this section;
(b) Gig or snag from a platform;
(c) Gig from a boat in a lake with a surface area of less than 500 acres;
(d) Gig at night from a boat; or
(e) Snag from a boat.

(3) A snagging rod shall be equipped with:
(a) Line;
(b) Guides;
(c) A reel; and
(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:
   1. The Green River and its tributaries; or
   2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;
(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;
(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;
(e) Cave Run Lake; or
(f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:
(a) For twenty-four (24) hours a day from January 1 through May 31; and
(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in the section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:
(a) Under the U.S. 62 bridge;
(b) Under the P & L Railroad bridge; or
(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:
(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp;
(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp; and
(c) The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and

2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or pull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:
(a) A daily limit of paddlefish is reached; or
(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.
Section 7. Bow Fishing. (1) An angler [A person] using archery equipment, [a] a crossbow, or a pneumatic arrow launching device shall not take:
(a) Sport fish;
(b) Alligator gar;
(c) More than five (5) catfish daily; or
(d) More than two (2) paddlefish daily.
(2) Any paddlefish or catfish shot with archery equipment, [a] a crossbow, or a pneumatic arrow launching device shall:
(a) Be immediately retained, and not released or culled; and
(b) [Count toward a person’s daily limit.]
(3) Bow fishing shall be open statewide, except:
(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;
(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or
(c) From boat landing areas below navigation, power generating, or flood control dams.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 14, 2015 at 2 p.m.
PL 95 LC 95 LC 2700 7109, ext. 4507, fax (502) 564-9136, email lwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish and wildlife by nontraditional fishing methods.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunity.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 35.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow anglers to use pneumatic arrow launching devices as a form of bow fishing for rough fish.
(b) The necessity of the amendment to this administrative regulation: This amendment increases bow fishing opportunities for anglers, especially those who would not be able to participate in bow fishing due to physical limitations.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who bow fish and wish to use pneumatic arrow launching devices 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) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).
(b) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who bow fish will now have increased opportunities through the use of pneumatic arrow launching devices.
(c) In complying with this administrative regulation or amendment, provide a brief summary of:
(a) Initially: This administrative regulation change will result in no initial change in cost.
(b) On a continuing basis: There will be no additional cost on a continuing basis.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation change will result in no initial change in cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.
(9) TIERING: Is tiering applied? Tiering is not applied because all bow fishermen will be affected equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a
limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

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

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

301 KAR 2:224. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits, based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) “Dove” means mourning dove or white-winged dove.

(2) “Migratory game bird” means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) “Teal” means green-winged teal, blue-winged teal, or cinnamon teal.

(4) “Wildlife Management Area” or “WMA” means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has “Wildlife Management Area” or “WMA” as part of its official name.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) dove, beginning on:
1. September 1 for fifty-six (56) consecutive days;
2. Thanksgiving Day for eleven (11) consecutive days; and
3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) woodcock, beginning on November 1 for forty-five (45) consecutive days;

(c) [Common] snipe, beginning on:
1. The third Wednesday in September for forty (40) consecutive days; and
2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) wood duck, beginning on the third Saturday [Wednesday] in September for five (5) consecutive days;

(e) teal, beginning on the third Saturday [Wednesday] in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common gallinule, purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose, beginning September 1 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:
1. Public land in the Ballard Zone;
2. Public land in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:
1. Daily limit of fifteen (15); and
2. Possession limit of forty-five (45).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:
1. The head; or
2. A fully-feathered wing.

(c) Woodcock:
1. Daily limit of three (3); and
2. Possession limit of nine (9).

(d) [Common] snipe:
1. Daily limit of eight (8); and
2. Possession limit of twenty-four (24).

(e) Virginia and sora rail, singly or in aggregate:
1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).

(f) Common and purple gallinule, singly or in aggregate:
1. Daily limit of three [five] (3); and
2. Possession limit of nine [fifteen] (9) [twenty] (20).

(g) Wood duck and teal:
1. Daily limit of six (6), which shall not include more than two (2) wood ducks; and
2. Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.

(h) Canada goose:
1. Daily limit of five (5); and
2. Possession limit of fifteen (15).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

(a) The head; or
(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

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(2) If hunting dove on private land, a person shall hunt:
(a) Between 11 a.m. and sunset on September 1; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or
(c) Shot larger than size “T”.

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:
(1) Hunting waterfowl or doves; or
(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:
(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222; or
(b) Hunt in an area marked by a sign as closed to hunting; or
(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:
(a) Ballard WMA;
(b) Boatwright WMA;
(c) Doug Travis WMA;
(d) Duck Island WMA;
(e) Kaler Bottoms WMA;
(f) Kentucky River WMA;
(g) Ohio River Islands WMA;
(h) Sloughs WMA;
(i) South Shore WMA;
(j) Yatesville Lake WMA; and
(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common gallinule[moorhen], purple gallinule, or snipe after October 13; or
(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
(a) Dove, Virginia rail, sora rail, common gallinule[moorhen], purple gallinule, or snipe after October 13; or
(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
(a) Dove or snipe after October 13; or
(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:
(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
(b) On Deer Creek Fork; or
(c) On Camp Webb property or the state park, except for youths drawn for any department quota dove hunt on Camp Webb property in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt Canada goose during the September season.

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting unless authorized by Yatesville Lake State Park:
(a) The Greenbrier Creek embayment; and
(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: August 5, 2015
FILED WITH LRC: August 21, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 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 be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through close of business November 2, 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) 564-7108, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2015–2016 migratory bird hunting seasons and area specific requirements, which are consistent with national and international management goals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of wildlife. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the start of wood duck and teal seasons from the third Wednesday in September to the third Saturday in September. It will decrease the daily bag limit of common and purple gallinules from fifteen (15) to three (3) and the possession limit from forty-five (45) to nine (9). All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase migratory bird hunting opportunity for early migratory bird hunting...
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seasons, as defined by the dates in which the hunting season may open as early as September 1.
(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Duck hunters will have the start of the season shift from the third Wednesday to the third Saturday in September. This will allow an additional weekend of hunting opportunity for teal hunters. teal hunters will have a reduced bag limit from fifteen (15) to three (3) and reduced possession limit from forty-five (45) to nine (9).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.
(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 implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.
(9) TIERING: Is tiering applied Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife 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 open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.
(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.
3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. The amended regulation is more restrictive than the federal frameworks for gallinule bag limits and possession limits. The limits are being reduced because of declining in the mid-continental populations, including Kentucky populations. By reducing bag limits, we are hoping to avoid a complete season closure by the U.S. Fish and Wildlife Service.


RELATED TO: KRS Chapter 217B
STATUTORY AUTHORITY: KRS 217B.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 authorizes the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes the definitions which apply to 302 KAR Chapter 29, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected,
undesirable event caused by the use or presence of a pesticide that adversely affects humans or the environment.

(2) “Application” means placing of a pesticide for effect, including mixing and loading.

(3) “Authorized agent” means a manager or license holder that is actively engaged in the company.

(4) “Calibration” means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(5) “Certification” or “certified” means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(6) “Children are present” means the designated time period between two (2) hours before the start time and forty-five (45) minutes after the dismissal time of the regularly scheduled school day as determined by the school authority under the calendar set by the school board.

[7] Commercial structural applicator” means a certified applicator that, for compensation, uses or supervises the use of any pesticide on any structure or substandard structure as defined in subsections (45)[(43)] and (46)[(44)] of this section.

(8)[(2)] “Commercial structural fumigation license” means a license issued to a person allowing him to engage in the business of using poisonous gases to control pests, general pests, and wood destroying organisms in structures.

(9)[(14)] “Common exposure route” means a probable manner, oral, dermal, or respiratory, by which a pesticide may reach or enter an organism.

(10)[(9)] “Compatibility” means chemical property of a pesticide that permits use with other chemicals without undesirable results being caused by the combination.

(11)[(10)] “Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

(12)[(11)] “Consumer disclosure form” means a form which:
(a) Discloses to the consumer any wood destroying organism work to be performed by the commercial structural applicator; and
(b) Includes the elements of the consumer disclosure form recommended by the Pest Control Advisory Board, approved by the Kentucky Department of Agriculture, and incorporated by reference in 302 KAR 29.050.

(12) “Continuing education unit” means one (1) contact instructional hour of fifty (50) minutes.

(13) “Conventional termite treatment” means treatment with a registered liquid termicide, used according to label instructions.

(14) “Environment” means water, air, land, plants, humans and other animals living therein, and the interrelationships which exist among them.


(16) “Graph” means a drawing of a structure that identifies the type of structure, provides an outline of the structure indicating approximate length and width and records current visible wood-destroying activity, any current visible wood-destructing damage, and treatment methods recommended.

(17) “Hazard” means a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(18) “Health care center” means hospitals, nursing homes, convalescent centers, clinics, medical centers, or any facility that provides overnight stay for the purpose of health care.

(19) “Host” means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(20) “Inactive status” means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(21) “Integrated pest management program” means a strategy of controlling pests, general pests, and wood destroying organisms by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.

(22) “Kentucky State Plan” means the certification maintenance requirements and training courses approved by the department on recommendation of the Pest Control Advisory Board as set forth in 302 KAR 29.060.

(23) “Moisture control treatment” means a treatment applied under the structure which consists of a ventilation system, soil cover, liquid chemical treatment, or any combination of the above.

(24) “Negligent manner” means failure to use reasonable care in application or use of pesticides.

(25) “New employee” means a person who has not been previously trained for thirty (30) days pursuant to KRS 217B.560.

(26) “Noncommercial structural applicator” means a certified person who uses or supervises the use of any pesticide while making applications to any structure owned, occupied, or managed by him or his employer.

(27) “Nontarget organism” means a plant or animal other than the one against which the pesticide is applied.

(28) “Notification” means information distributed to persons who request a notice of a pesticide application.

(29) “Operator in charge” means a person certified to apply fumigants and charged with the duty of overseeing the fumigation operation.

(30) “Outside areas” means the property associated with commercial industrial or residential structures where a commercial structural pest control license holder, under KRS 217B.515(1)[(a), is authorized to control pests, general pests, and wood destroying organisms by means other than lawn chemicals as defined under KRS 217B.300(1)[e]. Outside areas shall exclude places where land use practices are turf sports, golf courses, and farming practices.

(31)[(29)] Partial termite treatment” means any treatment performed to selected areas of a structure.

(32) “Posted” means a sign measuring at least eight and one-half (8.5) inches by eleven (11) inches displaying the words “Pesticide Treatment Area” and “Do Not Enter” along with listing an identified time for re-entry after the pesticide application is made.

(33)[(29)] “Practical knowledge” means the comprehension of and ability to identify and use pertinent facts in dealing with specific problems and situations.

(34)[(29)] “Protective equipment” means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(35)[(29)] “Registry” means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.

(36)[(29)] “Regulated pest” means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, humans, or the environment.

(37)[(34)] “Remote pesticide sales agent” means an individual located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.

(38)[(34)] “Resident pesticide sales agent” means an individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.

(39)[(36)] “School” means an institution for teaching children such as, but not limited to, preschool, kindergarten, child day care centers, primary, and secondary schools.

(40)[(29)] “School authority” means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.

(41)[(34)] “Spot fumigation” means a fumigation operation performed for the control of structural pests or wood-destroying organisms in special rooms, vaults, chambers, tanks, railroad boxcars, barges, aircraft, or other enclosed areas of limited size, and which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic
concentrations of the fumigants used.

(42) "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(43) "State" means the Commonwealth of Kentucky.

(44) "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.

(45) "Structural pest control license" means a license issued to a person allowing him to engage in the business of structural pest control.

(46) "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(47) "Substandard structure" means those structures with less than fourteen (14) inches of clearance between the soil and the bottom of the floor joists in the crawl area, structures with wood-to-soil contact, or any other structures that cannot be treated according to label directions.

(48) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(49) "Termite baiting system" means a termite monitoring and control program that uses bait stations, according to label directions, to deliver toxicant to termites.

(50) "Termite pretreatment" means the application of an approved termicide or baiting system, according to label directions, in new construction.

(51) "Toxicity" means the property of a pesticide that causes any adverse physiological effects to a living organism.

(52) "Unauthorized personnel" means any individual or individuals not belonging to, or a part of, the fumigating crew performing a fumigation operation.

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on October 21, 2015, at 10:00 a.m., at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 2, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amendment modifies and renumbers the definitions for chapter 29.
(b) The necessity of this administrative regulation: This amendment is necessary for the other amendments to the administrative regulations in chapter 29 to be consistent with each other and this filing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary as the definitions used are technical and required for an understanding of structural pest control.
(d) How this administrative regulation currently assists or will assist the reader in understanding the administrative regulations: This administrative regulation is necessary as the definitions used are technical and required for an understanding of structural pest control. They will assist the reader by providing clear technical terms.

(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 creates new definitions, creates modifications, and deletes definitions no longer needed.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary as the definitions used are technical and required for an understanding of structural pest control.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 7,952 licenses for category 7 were issued at the time of this filing.

(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 changes are required due to a change in definitions.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost changes are anticipated for this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits are expected due to this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost to this program.
(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and special funds support the pesticide programs.

(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 are associated with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Kentucky Department of Agriculture, Local School Districts

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No
revenue is associated with 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? No revenue is associated with this amendment.
(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program.
(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing 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:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection,
Division of Environmental Services
(Amendment)


STATUTORY AUTHORITY: KRS 217B.050
NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050
requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent. (1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.
(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.
(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.
(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.
(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:
(a) Brand, amount, and type of restricted use pesticide sold;
(b) Buyer’s name and address;
(c) Certification number of the purchaser; and
(d) Intended use: target pest or resale.
(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termicides shall maintain the following records:
(a) Date of application;
(b) Name and address of person receiving services and location of performance of services;
(c) Beginning time of application and ending time of application;
(d) The target pests to be treated;
(e) Brand or product name of pesticides applied;
(f) A description of the use of the area where the pesticide application is made;
(g) Estimated amount of each pesticide applied; and
(h) Name of applicator and address of person receiving services and location of performance of services.
(3) Standards for storage and application. All persons who sell or distribute restricted use pesticides shall be licensed as a remote pesticide sales agent. (4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons holding a Category 7(a), Category 7(b), Category 7(c), Category 8, or Category 12 license who have occasion to store pesticides.
(2) Standards for storage:
(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;
(b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;
(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;
(d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per local directions; and
(e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words “pesticide storage area” and “danger” or “poison.”
(3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject
Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

[Section 6. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicle identification plate and pesticide applicator service identification marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.555 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall remove the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state.]

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: September 14, 2015
FILED WITH AGENCY: September 15, 2015
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015, at 10:00 a.m., at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing, by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 2, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment slightly modifies the record retention requirements for regulated entities.

(b) The necessity of this administrative regulation: This amendment is necessary to create and maintain records that are clearer and more useful for regulated entities, the Department, and consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes command the Department to create regulations for program implementation. This regulation helps determine what records are needed and for how long they must be maintained at minimum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment is necessary to create and maintain records that are clearer and more useful for regulated entities, the Department, and consumers.

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

(a) How the amendment will alter this existing administrative regulation: This amendment is necessary to create and maintain records that are clearer and more useful for regulated entities, the Department, and consumers.

(b) The necessity of the amendment to this administrative regulation: This amendment is will create and maintain records that are clearer and more useful for regulated entities, the Department, and consumers.

c) How the amendment conforms to the content of the authorizing statutes: This regulation helps determine what records are needed and for how long they must be maintained at minimum.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to create and maintain records that are clearer and more useful for regulated entities, the Department, and consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 7,952 licenses are issued at the time of this filing for category 7.

(4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to maintain the information altered in accordance with the terms of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear recordkeeping requirements may be easier for entities to manage.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

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

General and special funds are used to administer the pesticides programs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing establishes no fees.

(9) TIERING: Is tiering applied? No. All regulated entities have 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 Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B 050

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is associated with 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? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No changes in cost for this filing.

(d) How much will it cost to administer this program for...

RELATES TO: KRS Chapter 217B
STATUTORY AUTHORITY: KRS 13B.070(3), 217B.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the settlement of administrative complaints brought pursuant to KRS 217B.545.

Section 1. Commencement of Settlement Proceedings. At any time after the service of an administrative complaint upon a licensee and before hearing, the responding licensee may seek a settlement of any pending allegation.

Section 2. Presentation of Proposal to Board. If an appropriate settlement has been negotiated, it shall be presented to the board for acceptance, rejection, or modification. If accepted or modified, the offer of settlement[and if accepted,] shall be signed by the chairman and forwarded to the commissioner for acceptance or rejection.

Section 3. Effect of Rejection. If the board rejects an offer of settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B, unless the licensee requests that the offer be submitted directly to the commissioner for decision. If requested by the licensee, the offer shall be submitted directly to the commissioner along with the board's reasons for rejecting the offer and a recommendation from the board that the commissioner not approve the offer. The commissioner shall accept or reject the offer after reviewing the whole record. He may allow oral argument on the proposed offer before he makes a decision if either party moves for it and if it appears that such argument would substantially contribute to the decision-making process. If the commissioner approves the offer, he shall enter an appropriate order in conformance with the proposal. If the commissioner rejects the offer, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B. Rejection shall not be taken as a finding or determination of any kind on behalf of the board or commissioner, and no orders or other pleadings shall be filed in regard to any rejected offer.

Section 4. Action by the Commissioner. If the commissioner approves of the board's recommendation for acceptance, rejection, or modification of an offer of settlement, a request by the licensee for settlement after rejection by the board, or if the commissioner dismisses the complaint in whole or in part, he shall enter an order in conformance with his findings. If the commissioner rejects the settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B.

[Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.]

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015, at 10:00 a.m., at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 2, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Merit Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amendment slightly modifies the role and involvement of the PCAB.
(b) The necessity of this administrative regulation: This amendment allows the PCAB to suggest a modification of a settlement agreement to the Commissioner. The current wording does not allow for this option.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes allow for the PCAB to provide suggestions to the KDA. This change will allow an additional role in advisement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment allows the PCAB to suggest a modification of a settlement agreement to the Commissioner. The current wording does not allow for this option.
(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 slightly modifies the role and involvement of the PCAB.
(b) The necessity of this administrative regulation: This amendment allows the PCAB to suggest a modification of a settlement agreement to the Commissioner. The current wording does not allow for this option.
(c) How the amendment conforms to the content of the authorizing statutes: The statutes allow for the PCAB to provide suggestions to the KDA. This change will allow an additional role in advisement.
(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the PCAB to suggest a modification of a settlement agreement to the Commissioner. The current wording does not allow for this option.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 7952 category 7 licenses are issued at the time of this filing.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions need be taken.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are incurred.
As a result of compliance, what benefits will accrue to the entities identified in question (3): An additional appeal step and platform is provided for license discipline actions.

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

(a) Initially: No additional cost to this program.
(b) On a continuing basis: No additional cost to this program.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An additional appeal step and platform is provided for license discipline actions.

What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

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

State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fee is in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year: No revenue is associated with 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: No revenue is associated with this amendment.
(c) How much will it cost to administer this program for the first year: No additional costs are anticipated, and this is an ongoing program.
(d) How much will it cost to administer this program for subsequent years: No additional costs are anticipated, and this is an ongoing 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:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection,
Division of Environmental Services
(Amendment)


RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:
(1) Commercial structural pest control applicator;
(2) Commercial structural pest control manager;
(3) Commercial structural fumigation applicator;
(4) Commercial structural fumigation manager; or
(5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:
(a) A completed [3] Commercial Structural Pest Control Examination Application[;]
(b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud[.] or misrepresentation,[ or a felony];
(c) College transcripts if applicable; and
(d) Written verification of pesticide work experience, pursuant to KRS 217B.520.

(2) All applications for applicator or manager examinations shall be sworn to and notarized.

(3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.

(4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.

(5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.

(6) The application of any applicant convicted of a felony shall require approval by the board.

(7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.

(8) The manager's license examination shall be timed and shall be completed within two (2) hours.

(9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed [3] Structural Pest Control Renewal[;] form with a fee of $100 for each place of business maintained in Kentucky, shall result in the license holder having his license suspended until the renewal registration has been received and the fee and any associated fines are paid.

(3) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:
(a) Name, address, and home telephone number;
(b) Social Security number; and
(c) Job title.

(4) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after the change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:
(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.
evention of
Rodenticides shall be used only for control or prevention of wood-destroying organisms, including powderpost beetles and old house borers, shall be in accordance with directions on the product label.
(3) Loose cellulose debris that can be raked from beneath structures shall be removed.
(4) Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.

b. Moisture readings shall be recorded on a graph at the time of original sale of treatment.
c. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed.

Section 6 (Wood-destroying Organisms Reports. (1) A person holding a commercial structural pest control operator's license shall submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report.

(2) Reports shall be made on the “Monthly Report of Wood-destroying Organisms Treatments” form and received by the department no later than the 15th of the month following treatment.

(3) All reports shall be signed by the licensed applicator or authorized agent for that company.
(4) Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued except those for preconstruction treatments shall be accompanied by a consumer disclosure signed by the consumer or an individual authorized by the consumer and a graph. If a signature cannot be obtained, a detailed explanation for the absence of the signature shall be included on the form.

Section 8. Inspections by the Department. (1) The commissioner or his authorized representative may examine properties treated for the purpose of determining compliance with the treatment standards established in Section 5 of this administrative regulation.

(2) The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department.

(3) If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations.

(4) If the license holder negates or refuses to abate the violations, the license shall be suspended, as provided by KRS 217B.545, except for good cause shown.

(5) If a license is suspended, the license holder shall:
(a) Retreat all properties on which a violation has been found;
(b) Not otherwise service any current contracts or solicit any new business; and
(c) Notify the department of the dates of all reexaminations and retreatments.

(6) When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall make the reinspections at its earliest convenience.

(7) If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 7 [9.] Rodent Control. [Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals.] Rodenticides shall be used only according to label directions.

Section 8 [110.] Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants operation. Fumigation shall not be conducted unless at least two (2) individuals work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation.
(a) Before performing general fumigation in a structure or enclosed space, a license or certification holder shall notify in writing the fire department and the police department having
jurisdiction over the location where the fumigation operation is to be performed.

(b) [omitted]

(c) The notice shall give the following information:
1. Location of structure or enclosed space to be fumigated as well as its character and use;
2. The fumigant to be used;
3. The date and time of release of fumigant and approximate exposure period; and
4. The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this subsection shall not apply to spot fumigation.

(4) Structures to be vacant.

(a) Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation.

(b) The operator in charge shall make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs.

(a) Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

<table>
<thead>
<tr>
<th>Name of Fumigant:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Telephone:</td>
</tr>
<tr>
<td>Operator in Charge:</td>
</tr>
<tr>
<td>Day Phone:</td>
</tr>
<tr>
<td>Night Phone:</td>
</tr>
</tbody>
</table>

(b) The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(c) Final pre-fumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;

(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;

(c) That no open fires or open flames, pilot lights or oil lamps are burning;

(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen.

(a) During the period of fumigation, and until the structure has been ventilated and declared safe, at least one (1) capable, alert watchman or guard, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen.

(b) The guard or watchman shall prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period.

(c) Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. (d) If a warning agent is used, the requirements established in this subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and

(b) Any equipment or device which produces a fog, smoke, or mist.

Section 9 Structural Pest Control and Fumigation Licenses. (1) A person holding a general pest and wood-destroying organism or fumigation license may continue to do business in those categories of pest control for which the person is licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29.020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29.020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29.060.
Section 10. Integrated Pest Management in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling pests, general pests, and wood-destroying organisms with the judicious use of pesticides. 

(1) Pesticides may be applied without notification indoors and to outside areas when children are not present.

(2) Pesticides may be applied without notification when children are present but shall be limited to:
   (a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;
   (b) Personal insect repellents;
   (c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians;
   (d) Manufactured paste, gel, or other formulations designated on the product label as bait and applied according to label instructions where humans do not have reasonable access to the application area;
   (e) Rodent control products placed in industry-identified tamper-resistant bait stations or rodenticides placed in wall voids or other rodent harborage sites that are inaccessible to humans.

(3)(a) Each school authority shall maintain a registry of electronic mail or telephone contact numbers of parents or guardians who have requested notification prior to the application of pesticides in schools when children are present, and shall provide written notice to parents or guardians at the beginning of each school year of the existence of the registry and the process for obtaining notification placed on the registry. The written notice shall be as follows:

“Dear Parent or Guardian:

Each school district in the Commonwealth is required to implement a program of “integrated pest management” with the primary goal of preventing and controlling pests through strategies that may include judicious use of pesticides. The application of pesticides in the school or on school grounds during times when children are present is limited by state regulation, but there may be occasions when, after consulting with a certified pesticide applicator, the school administration determines that a pesticide application is necessary when children are present in the school. As required by state regulation, we have created a registry for parents or guardians who wish to receive an electronic message or telephone call prior to the application of pesticides in the school when children are present. Please provide the school administration your email address or phone number if you wish to be placed on this registry.”

(b) Notification by the school to parents or guardians on the registry shall be required when the school authority, after consultation with the certified applicator, determines that a pesticide application other than those listed in subsection (3)(a) of this section, is necessary when children are present in the school.

(c) For pesticide applications made when children are present, the school authority shall provide the notification to persons listed on the registry at least one (1) hour prior to the making of the application.

(4) The notification required by subsection (3)(b) of this section shall include:
   (a) The date and time of the pesticide application;
   (b) The target pests to be treated;
   (c) A description of the use of the area treated;
   (d) The brand name of the pesticides applied and the pesticide application method; and
   (e) A telephone number that persons requesting prior notification can use to contact the school authority for more information.

(5) A copy of the notification shall be maintained by the school authority for twenty-four (24) months after the notification is issued and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(6) The certified applicator shall only be required to provide to the school authority the information required in subsection (4)(a) to (d) of this section:

(7) The completed form required by subsection (6) of this section shall:
   (a) Include the information required in subsection (4)(a) to (d) of this section; and
   (b) Be signed by the school authority acknowledging that the required information was received from the certified applicator prior to the application of pesticides when children are present.

(8) A copy of the completed form shall be maintained for thirty-six (36) months by the certified applicator after it is received and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(9) The area where the point of application of a pesticide occurred shall be posted by the certified applicator regardless of the absence or presence of children.

Section 12. Pesticide Application in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the items specified in this section:

(1) Advance notification of pesticide use.
   (a) A master copy of the notification shall be kept by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school and parents or guardians of students enrolled in the school as determined by the contact information maintained on file. Notice shall not be required if:
      (1) A pesticide is to be applied at a time when the school is not in session under the calendar set by the school board; and
      (2) Persons other than the applicator and the minimum number of school staff necessary to allow the applications are not scheduled to be in the building during the application and for at least twenty-four (24) hours after the application.
   (b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty-four (24) months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel.

(2) The notification shall include the following:
   (a) The date of possible pesticide application;
   (b) A description of the general location of the pesticide application;
   (c) Description of pests treated, the brand name of the pesticides applied, including the list of active ingredients, and the pesticide application method; and
   (d) A telephone number that parents and staff can use to contact the school for more information.

(3) Special circumstances arise that prevent advance notice from being provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. The notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection (2)(a) to (d) of this section.

(4) The certified applicator shall only be responsible to furnish to the school the information needed by the school to comply with sub-sections (2)(a) to (d) of this section:
   (a) At least thirty-six (36) hours prior to the application of the pesticide, if the school notification was provided as required by subsection (1)(a) of this section; or
   (b) As early as possible, if the school notification was provided as required by subsection (3) of this section.

(5) Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-Destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) Exemptions. This administrative regulation shall not apply to application of the following types of pesticides:

   (a) Germicides, disinfectants, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;
Section 11. Branch Office Operations. Each branch office shall have a licensed manager. Any vacancy in the position of branch manager shall be filled within sixty (60) days of the occurrence of the vacancy.

(a) "Commercial Structural Pest Control Examination Application", 2002;
(c) "Structural Pest Control Renewal Form", December 2006;
(d) "Consumer Disclosure Form", 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at www.kyagr.com.

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: September 14, 2015

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015, at 10:00 a.m., at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 2, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:
(a) What this administrative regulation does: This amendment consolidates two current certification subsections and modifies the application process for schools.
(b) The necessity of this administrative regulation: This amendment is necessary to modernize the certification process and make the school application process more transparent and easier to understand for all parties involved.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment creates a clearer process for all parties which is the intent of the authorizing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment is necessary to modernize the certification process and make the school application process more transparent and easier to understand for all parties involved. With the changes herein, administration will be easier as the records and process will be easier to review if needed.

(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 consolidates two current certification subsections and modifies the application process for schools.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the certification process and make the school application process more transparent and easier to understand for all parties involved.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment creates a clearer process for all parties which is the intent of the authorizing statutes.
(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to modernize the certification process and make the school application process more transparent and easier to understand for all parties involved.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 7,950 total entities are currently regulated by the KDA. Kentucky has 173 public school districts and 1,233 public schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will need to complete a new form for school applications. For those holding a prior 7A certification three additional hours of training will be required by the time of renewal.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KDA would estimate that the number of inquiries may fall after the adoption as the paperwork process will be more transparent between the schools and the applicators.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The KDA would estimate that the number of inquiries may fall after the adoption as the paperwork process will be more transparent between the schools and the applicators.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost to this program.
(b) On a continuing basis: No additional cost to this program.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and special agency funds.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.
(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture, and school districts in the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is associated with 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? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program. The KDA expects no increased costs for the administration of this program change. The KDA estimates very little cost, if any, will be increased by the school districts for the notification process.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program. The KDA expects no increased costs for the administration of this program change. The KDA estimates very little cost, if any, will be increased by the school districts for the notification process.

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
Department of Agriculture
Office of Consumer and Environmental Protection,
Division of Environmental Services
(Amendment)


RELATES TO: KRS Chapter 217B, 7 U.S.C. 136
STATUTORY AUTHORITY: KRS 217B.050, 217B.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Except as provided by Section 7 of this administrative regulation, the certifications established in this administrative regulation shall be valid for three (3) years and shall be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover the use of general pests or any individual who sells and makes recommendations for the use of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. A person shall not take an examination for a certification category while holding an active certification in the same category as the examination requested. Competency in the use and handling of pesticides shall be demonstrated based on the standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed [Structural Pest Control License Form[*]] specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:
(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
(b) Classification of the product, general or restricted; and
(c) Necessity for use consistent with the labeling;
(2) Safety factors, including:
(a) Pesticide toxicity, hazard to humans, and common exposure routes; and
(b) Common types and causes of pesticide accidents;
(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
(d) Symptoms of pesticide poisoning;
(e) First aid and other procedures to be followed if a pesticide accident occurs;
(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and
(g) The proper selection and use of personal protective equipment for the handling and application of pesticides;
(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:
(a) Weather and other climatic conditions;
(b) Types of terrain, soil, or other substrata;
(c) Presence of fish, wildlife, and other nontarget organisms; and
(d) Drainage patterns;
(4) Pest identification, including consideration of the following factors:
(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
(b) Pest maturation and development as it may relate to the problem of identification and control;
(5) Pesticides, including consideration of the following factors:
(a) Types of pesticides;
(b) Types of pesticide formulations;
(c) Compatibilities, synergism, persistence, and animal and plant toxicity of the formulation;
(d) Hazards and residues associated with use;
(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
(f) Dilution procedures;
(6) Equipment, including consideration of the following factors:
(a) Types of pesticide application equipment and advantages and limitations of each;
(b) Uses, maintenance, and calibration of equipment;
(7) Application techniques; factors including:
(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
(c) Prevention of drift and pesticide loss into the environment; and

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:
(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:
(a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, habits, types of formulations, insecticides appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets and a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper sanitation, structural repair, mechanical control techniques, and pesticide application. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazard. A prerequisite for certified applicators to apply structural pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.
(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of a 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.
(2) Category 8. Public health. Persons requesting public health certification shall demonstrate practical knowledge of vector-dispersal and transmission and regulations to control and reduce vector application programs. A wide variety of pests are involved and they shall be known and recognized; and appropriate life cycles and habitats shall be understood as a basis for control strategy. These applicants shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have a practical knowledge of the importance and employment of nonchemical control methods as sanitation, waste disposal and drainage. Each person with certification in category 8 in effect on September 8, 2010 shall be granted certification in category 7(a) and category 7(b) with an expiration date of December 31, 2012.
(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, and a knowledge of proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6. License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, pesticide fumigation managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7. Certification Maintenance. To maintain a category 7(a) or category 12 certification, each person certified under this administrative regulation shall, in any three (3) year period, attend at least fifteen (15) or twelve (12) continuing education units of training, approved by the department, in the management of pests, general pest control, pesticide application, and maintenance. Each person with certification in category 7(b) shall maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to, to maintain a category 7(b)[7c] certification, each person certified in this category shall, in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(b)[7c] certification, an additional three (3) category specific continuing education units shall be
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required [All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2015.] Credit shall be given in full continuing education unit increments only.

To maintain a category 8 or category 12, each person certified under this administrative regulation shall, in any three (3) year period, attend at least twelve (12) continuing education units of training for a single category, approved by the department, in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category, in addition to the single category held by the person, an additional three (3) continuing education units shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only.

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he shall do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall maintain certification and pay the annual renewal fee required by KRS 217B.535. The licensee shall not perform any type of regulated activity until the license is reactivated.

(b) Employee Commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form," October 2012, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at www.kyagr.com.

JAMES R. COMER, Commissioner
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015, at 10:00 a.m., at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on November 2, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment consolidates 7A and 7B certifications.

(b) The necessity of this administrative regulation: This amendment is necessary to modernize and streamline structural pesticide application requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to the statutes in that it makes the regulatory requirements simpler and more uniform for the regulated entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Administration will be easier by having only one set of requirements for all applicators except fumigation.

(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 consolidates 7A and 7B certifications.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize and streamline structural pesticide application requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the statutes in that it makes the regulatory requirements simpler and more uniform for the regulated entities.

(d) How the amendment will assist in the effective administration of the statutes: Administration will be easier by having only one set of requirements for all applicators except fumigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 7950 combined licenses have been issued as of the time of this filing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities holding 7A only will need to obtain three additional hours of training in the next 3 year period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost would be one hour of time per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirements for 7A and 7B would be streamlined, resulting in simpler requirements for regulated entities.

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

(a) Initially: No additional cost to this program.
(b) On a continuing basis: No additional cost to this program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not alter the fees previously established

(9) TIERING: Is tiering applied? (Explain why or why not) No. All regulated entities have 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 Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B 050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year: No revenue is associated with 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? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program. The KDA expects no increased costs for the administration of this program change.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program. The KDA expects no increased costs for the administration of this program change.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality

(17) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(18) "Month of operation" means a month during which a gasoline dispensing facility was in operation.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 59-001. (1) "Average monthly throughput" means:

(a) For an existing facility, the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months. 

(b) For a facility which commenced construction on or after the effective date of this administrative regulation, an estimate provided by the owner or operator and approved by the cabinet of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(2) "Balance system" means a Stage II vapor recovery system which uses direct displacement to force vapor out of the receiving container and back into the space of the container from where the liquid product was withdrawn.

(3) "Boat" means an accordion-like tubular cover used over the spout of a gasoline nozzle to provide a return-path for gasoline vapors displaced during refueling.

(4) "CARB" means the California Air Resources Board.

(5) "CARB certification" means a document such as an executive order or approval letter provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during refueling, and which identifies the performance standards required for the system or system components. An executive order may also identify the range of permissible components, permissible construction configurations, and the required tests for compliance.

(6) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(7) "Decommission" means to render inoperable a stage II vapor recovery system.

(a) "Dry break" means a spring-loaded valve that prevents vapor from escaping through the vapor recovery riser pipe opening of a storage tank.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Existing gasoline dispensing facility" means a facility that commenced dispensing gasoline prior to January 1, 2016.

(11) "Faceplate" means a soft, donut-shaped device attached to the boot of a balance nozzle which forms a tight seal with the vehicle fuel tank during refueling.

(12) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank.

(13) "Facility representative" means a facility employee who has been trained to serve at that facility as prescribed in Section 5 of this administrative regulation.

(14) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank.

(15) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or operation of the equipment.

(16) "Modification" or "modify" means:

(a) The repair, replacement, or upgrade of a facility's Stage II equipment at a cost equal to seventy-five (75) percent or more of the cost of a total system replacement at the time of modification; or

(b) A change, such as the removal of a CARB certified component and the addition or removal of piping or fittings, which may cause the vapor recovery system to be incapable of maintaining an overall control efficiency of at least a ninety-five (95) percent reduction in the VOC emissions.

(17) "Month" means calendar month.

(18) "Month of operation" means a month during which a
facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(19) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(20) "New gasoline dispensing facility" means a facility that commenced dispensing gasoline on or after January 1, 2016.

Stage I vapor recovery system means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs by ninety-five (95) percent or more during the transfer of gasoline to a stationary storage tank at a facility.

Stage II vapor recovery system means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs by ninety-five (95) percent or more.

"Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Vacuum assist system means a Stage II vapor recovery system which uses a vacuum inducing device to collect vapor from the receiving container and direct it back into the space of the container from where the liquid product was withdrawn.

Section 2. Applicability. (1) This administrative regulation shall apply to the owner or operator of a gasoline dispensing facility located in a county in which the entire county, as of January 1, 1998, was subject to the compliance timetable, and in all counties in which the entire county, as of the effective date of this administrative regulation, is incorporated by reference in Section 11 of this administrative regulation.

(2) Subject to the compliance timetable set forth in Section 8 of this administrative regulation, an owner or operator of an existing gasoline dispensing facility shall not transfer or allow the transfer of gasoline from a storage tank at that facility into a motor vehicle fuel tank unless the displaced vapors are collected by a Stage II vapor recovery system and the requirements of this administrative regulation are met.

(3) A new gasoline dispensing facility and an existing gasoline dispensing facility after decommissioning has been completed shall not be subject to the requirements of Sections 3 through 10 of this administrative regulation.

Section 3. Registration and Notification Requirements. The owner or operator shall submit registration and notification forms to the Division for Air Quality as specified in this section. These forms are incorporated by reference in Section 11 of this administrative regulation.

(1) Registration of facilities. DEP 7105, Gasoline Dispensing Facility Registration Form, shall be submitted at least thirty (30) days prior to installing or modifying a Stage II vapor recovery system.

(2) Compliance test notification. DEP 7105A, Compliance Test Notification Form, shall be submitted at least thirty (30) days prior to the performance of the compliance tests required in Section 6 of this administrative regulation.

(3) Stage II post inspection report. DEP 7105B, Stage II Post Inspection Form, shall be submitted within ten (10) work days after the applicable compliance tests have been performed.

(4) Notice of Intent to Decommission Stage II Controls and Decommission Plan Form. A completed DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission Plan Form shall be filed at least thirty (30) calendar days prior to commencing any decommissioning activity. If a change occurs to the submitted plan, a revision shall be filed at least ten (10) calendar days prior to commencing any decommissioning activities.

(5) Notice of Status of Decommissioning of Stage II Control Form. A completed DEP 7105D, Notice of Status of Decommissioning of Stage II Controls Form, shall be filed within ten (10) days after commencing decommissioning. If decommissioning is not completed within ten (10) days after commencing, an additional DEP 7105D forms shall be submitted.

Section 4. Control Measures and Operating Requirements. (1) The Stage II vapor recovery system shall:

(a) Be designed and operated to be at least ninety-five (95) percent effective in recovering displaced vapors;

(b) Be certified by CARB or an equivalent authority;

(c) Employ only coaxial hoses at the dispensers;

(d) Contain no components that would impede the performance of the functional or compliance tests of the system;

(e) Be integrated with a Stage I vapor recovery system; and

(f) Meet the testing requirements contained in Section 6 of this administrative regulation.

(2) The owner or operator shall comply with the following operational restrictions for the Stage II vapor recovery system:

(a) The system shall be installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable certification granted by CARB.

(b) The system shall be free of defects listed in this subsection.

The facility representative shall inspect the equipment daily for these defects. If a defect is discovered, through this inspection or otherwise, an "Out of Order" sign shall be posted and the defective equipment shall be rendered nonfunctional. Defects include:

1. The absence or disconnection of any component that is part of the Stage II vapor recovery system;

2. The use of equipment not in accord with the system certification;

3. A vapor hose that is crimped or flattened so that:
   a. The vapor passage is completely blocked; or
   b. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;

4. A boot that is torn in one (1) or more of the following ways:
   a. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or
   b. A hole more than one-half (1/2) inch in diameter; or
   c. A slit more than one (1) inch in length;

5. A faceplate or flexible cone on a boot that is damaged so that the ability to seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

6. A malfunctioning nozzle shutoff mechanism;

7. Vapor return lines, including components such as swivels, anticirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

8. An inoperative vapor processing unit;

9. An inoperative vacuum producing device;

10. An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

11. Leaks; and

12. An equipment defect which substantially impairs the control efficiency of the system.

(c) A defect in a component of the Stage II vapor recovery system which is not listed in paragraph (b) of this section shall not prevent operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(d) If the cabinet identifies a defect specified in paragraph (b) of this subsection, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been approved for use by the cabinet.

(3) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(4) The owner or operator shall display instructions for dispensing gasoline on or near each dispenser, in a print type and size that is easily readable, which include at a minimum:

(a) A description of how to use the equipment;

(b) A warning not to dispense fuel after automatic shutoff; and

(c) A telephone number established by the cabinet to report problems with equipment.

(5) At least one (1) person at the facility shall be trained pursuant to Section 5 of this administrative regulation.
Section 5. Training of Facility Representative. (1) The owner or operator shall ensure that at least one (1) person at the facility is trained to operate the vapor recovery system. The facility representative shall not be required to be present at the facility at all times, but shall perform or oversee the daily inspection of vapor recovery equipment for the defects listed in Section 4(1)(b) of this administrative regulation.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, by a trained facility representative, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training manuals are used, they shall be kept at the facility and made available to the cabinet upon request.

(3) Training shall include the following topics:
(a) Purposes of the Stage II vapor recovery program;
(b) Operation of the vapor recovery system at that facility;
(c) Daily equipment inspections;
(d) How to repair or replace faulty equipment without voiding the equipment warranties;
(e) Procedures for posting and removing "Out of Service" signs;
(f) The executive orders of CARB (or the equivalent authority certifying the system), the range of components certified for use in the system, and the requirements placed on the owner or operator;
(g) Maintenance schedules and requirements for the system and its components; and
(h) Equipment warranties.

(4) The training shall include a practical demonstration on how to operate and inspect the equipment and how to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system.

The cabinet may require that this demonstration be witnessed by the facility representative which includes the following:
(a) The name of the facility representative and the date training was received;
(b) Proof of attendance and successful completion of training; and
(c) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than thirty (30) consecutive days without a facility representative.

Section 6. Compliance Demonstration Test. (1) Within sixty (60) days after the installation or modification of a Stage II vapor recovery system, the owner or operator shall comply with the applicable test procedures specified in this subsection. The methods by which the tests specified in this subsection are to be conducted are set forth in Stationary Source Test Methods, Volume 2, Certification and Test Procedures for Vapor Recovery Systems, April 12, 1996. These tests are incorporated by reference in Section 11.44 of this administrative regulation.

(a) A leak test shall be performed in accordance with the applicable procedure specified in this paragraph. The vapor recovery system shall comply with the leak rate criteria specified in the applicable test procedure.

1. Vapor Recovery Test Procedure TP-201.3, Determination of Two (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities;
2. Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems ofDispensing Facilities; or
(b) A dynamic back pressure test shall be performed in accordance with Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.
(c) The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser for which gasoline can be dispensed simultaneously.

2. The vapor recovery system shall comply with the maximum allowable average dynamic pressures given in the test procedure.

(c) Vapor Recovery Test procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ration of Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(d) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(2) At intervals not to exceed five (5) years, the owner or operator shall demonstrate compliance with the requirements of the applicable test procedure specified in subsection (1)(a) of this section. The notification requirements of Section 3(2) of this administrative regulation shall apply for these tests.

(3) The cabinet may require the owner or operator to perform other tests if necessary to demonstrate the adequacy of a vapor recovery system.

Section 7. Recordkeeping Requirements. (1) The owner or operator shall maintain the following documents:
(a) Current CARB certification for the Stage II vapor recovery system installed at the facility;
(b) Proof of training for the current facility representative; and
(c) Test results which verify that the vapor recovery system meets or exceeds the requirements of compliance tests required in Section 6 of this administrative regulation.

(2) The following records shall be maintained for a period not less than three (3) years:
(a) A log of the quantity of gasoline delivered to the facility during each month;
(b) A log of maintenance records including any repaired or replaced parts and description of the problem;
(c) Inspection reports issued by the cabinet, kept in chronological order;
(d) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order; and
(e) The facility representative record specified in Section 5(3) of this administrative regulation.

(3) Records shall be kept current and made available to the cabinet upon request.

Section 8. Compliance Timetable. The owner or operator of an existing gasoline dispensing facility that is not exempt from this administrative regulation pursuant to Section 9 of this administrative regulation shall comply with this administrative regulation as established in this section. (1) The owner or operator shall commence decommissioning of the facility’s Stage II vapor recovery system pursuant to Section 10 of this administrative regulation on or after January 1, 2016.

(2) The owner or operator shall complete decommissioning of the facility’s Stage II vapor recovery system on or before December 31, 2018.

(3) The owner or operator shall comply with all sections of this administrative regulation unless and until the decommissioning of the facility’s Stage II vapor recovery system is complete in the following manner:
(a) Facilities with an average monthly throughput of 100,000 gallons or more, which commenced construction or before the classification date, shall comply within one (1) year of the classification date.
(b) Facilities with an average monthly throughput between 25,000 and 100,000 gallons, which commenced construction or before the classification date, shall comply within two (2) years of the classification date.
(c) Facilities commencing construction after the effective date shall comply before beginning to dispense gasoline.
Section 9. Exemptions. (1) The fuels and facilities specified in this subsection shall be exempt from this administrative regulation.

(a) Diesel fuel and kerosene. These fuels shall not be used in calculating the average monthly throughput to determine the applicability of this administrative regulation.

(b) A facility with an average monthly throughput of 25,000 gallons or less. This exemption shall cease to apply if the average monthly throughput exceeds 25,000 gallons prior to January 1, 2016, at which time facilities that were exempt before January 1, 2016, based on their average monthly throughput, shall continue to be exempt from this administrative regulation, and the throughput limitation shall no longer apply.

(c) A facility located in an air quality control region which has implemented a Stage II program that has been approved by the U.S. EPA.

(2) Recordkeeping for exempted facilities. An exempted facility shall maintain records for a period not less than two (2) years which demonstrate that the facility’s average monthly throughput has not exceeded the applicable throughput limit until January 1, 2016, after which time exempted facilities shall no longer be required to maintain records which demonstrate that the facility’s average monthly throughput has not exceeded the applicable throughput limit.

Section 10. Decommissioning. (1) The decommissioning procedure for a Stage II vapor recovery system shall be consistent with the procedure as described in Chapter 14 of the Petroleum Equipment Institute’s Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09, 2009, and

(a) Initiating safety procedures;
(b) Relieving pressure in the tank ullage;
(c) Draining all liquid collection points;
(d) Protecting against electrical hazards by disconnecting all Stage II electrical components;
(e) Reprogramming the electronics in the dispenser to indicate that Stage II vapor recovery is not in service;
(f) Sealing off vapor piping located below grade and below the level of the dispenser base in a secure manner;
(g) Sealing off vapor piping located below grade at the tank end, if reasonably accessible, in a secure manner;
(h) Sealing of vapor piping located inside the dispenser cabinet in a secure manner;
(i) Replacing Stage II vapor recovery-type hanging hardware with conventional-type hanging hardware;
(j) Installing pressure and vacuum vent valves as appropriate;
(k) Removing all Stage II instructions from all dispenser cabinets;
(l) Conducting appropriate testing, including pressure decay and tie-tank tests;
(m) Verifying that all visible storage system components will not release any vapors or liquids; and
(n) Restoring the gasoline dispensing facility back to operational status.

(2) Decommissioning, including all required testing, shall be completed within sixty (60) days of commencement of decommissioning.

(a) If decommissioning, including all required testing, is not completed within sixty (60) days of commencing decommissioning, lock-outs and "Out of Service" tags shall be installed on all gasoline dispensers that have not been decommissioned. The owner or operator shall notify the division by phone or fax within thirty (30) days. If the exemption ceases to apply, the owner or operator shall comply with this administrative regulation within one (1) year of notification by the cabinet.

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

(a) "DEP 7105, Gasoline Dispensing Facility Registration", August 1997;
(b) "DEP 7105A, Compliance Demonstration Notification", August 1997;
(c) "DEP 7105B, Stage II Post Inspection Form", August 1997;
(d) "DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission Plan Form", May 2015;
(e) "DEP 7105D, Notice of Status of Decommissioning of Stage II Controls Form", May 2015;
(f) "Petroleum Equipment Institute’s Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09, 2009, and

Section 11. The following material is incorporated by reference:

(a) Vapor Recovery Test Procedure TP-201.3, Determination of Two (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.
(b) Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.
(c) Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities with Above ground Storage Tanks.
(d) Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.
(e) Vapor Recovery Test Procedure TP-201.5, Determination (by Volume) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities.
(f) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities.

(2) This [material] material is incorporated by reference.
date, the hearing shall be cancelled, and notification of the cancellation shall be posted at http://air.ky.gov/pages/publicnoticesandhearings.aspx. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: William Gooch, Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, email William.Gooch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: William Gooch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides for the control of emissions from gasoline dispensing facilities by requiring the use of Stage II vapor recovery technology to capture gasoline vapor emitted during the refueling of motor vehicles in the nonattainment areas of Boone, Campbell, and Kenton counties. This regulation is original effective January 1, 1998. The amendment removes the requirement that Stage II vapor recovery technology be installed in new gasoline dispensing facilities beginning on January 1, 2016; authorizes existing gasoline dispensing facilities to begin decommissioning their Stage II controls on January 1, 2016; requires applicable gasoline dispensing facilities to complete decommissioning of Stage II controls by December 31, 2016; and sets forth notice and procedural requirements for the decommissioning process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the public health and environment of the Commonwealth of Kentucky by reducing emissions of volatile organic compounds (VOCs) in the affected areas associated with the refueling of motor vehicles at gasoline dispensing facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation assists the cabinet in fulfilling its statutory obligation to prevent, abate, and control air pollution as required by the NAQAQ and results in a reduction in VOCs.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing regulation in two ways. First, the amendment eliminates the requirement for new gasoline dispensing facilities to install Stage II vapor recovery systems effective January 1, 2016. Second, the amendment establishes notice and technical procedural requirements for the decommissioning of Stage II vapor recovery systems from existing gasoline dispensing facilities.

(b) How the amendment to this administrative regulation is necessary because on-board refueling vapor recovery (ORVR) systems are in widespread use in the affected area within the Commonwealth of Kentucky. ORVR technology is not compatible with Stage II vapor recovery systems presently in use in the affected area. If the amendment is not enacted, an increase in emissions of volatile organic compounds associated with the refueling of motor vehicles at gasoline dispensing facilities will occur.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. By implementing and enforcing the proposed amendment to this administrative regulation, VOC emissions will be reduced.

(d) How the amendment will assist in the effective administration of statutes: This amendment assists the cabinet in fulfilling its statutory obligation to prevent, abate, and control air pollution as required by the NAQAQ and results in a reduction in VOCs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The owners of new gasoline dispensing facilities will no longer be required to maintain Stage II vapor recovery systems presently in use in the affected area within the Commonwealth of Kentucky. ORVR technology is not compatible with Stage II vapor recovery systems presently in use in the affected area. If the amendment is not enacted, an increase in emissions of volatile organic compounds associated with the refueling of motor vehicles at gasoline dispensing facilities will occur.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Each owner or operator of an existing gasoline dispensing facility with an average monthly throughput of over 25,000 gallons will have to decommission Stage II controls by December 31, 2016. Existing facilities will be given notice of intent to decommission Stage II controls and a decommissioning plan. Each owner or operator of an existing gasoline dispensing facility with an average monthly throughput of over 25,000 gallons or less will no longer be required to maintain records of average monthly throughput. The owners and operators of new gasoline dispensing facilities constructed in the affected area in the future, will not be required to maintain records of their throughput capacity to maintain their exemptions. The amendment will also affect the owners or operators of an unknown number of new gasoline dispensing facilities constructed in the affected area. The amendment will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only entities that will incur a cost are the owners or operators of the 140 existing gasoline dispensing facilities with an average monthly throughput of over 25,000 gallons. The affected entities will have to incur the cost of decommissioning their Stage II vapor recovery systems by December 31, 2016. In a final regulatory support document issued by the EPA on May 8, 2012, the one-time cost of decommissioning for a gasoline dispensing facility with five multi-product dispensers, including labor, hardware/parts, administrative tasks, and lost revenue, is estimated to be $1,980.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The owners of new gasoline dispensing facilities will accrue the benefit of not having to incur the cost of installing or maintaining Stage II vapor recovery systems. The owners of existing gasoline dispensing facilities with an average monthly throughput of over 25,000 gallons will accrue the benefit of not having to incur the cost of maintaining their Stage II vapor recovery systems.
recovery systems after completion of decommissioning. In the
same regulatory support document referenced above issued by the
EPA on May 8, 2012, there is an actual cost savings for the model
gasoline dispensing facility during the initial year of
decommissioning of $997 and a recurring cost savings of $2,977 in
subsequent years. The reduced operating costs will result in an
economic advantage to gasoline dispensing facilities in the
affected area that they would not otherwise realize without the
amendment.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: The Division already implements a program for the
control of emissions from gasoline dispensing facilities, including
the inspection of Stage II controls at gasoline dispensing facilities.
Pursuant to the proposed amendment, effective January 1, 2016,
Stage II controls will no longer be required to be installed in new
gasoline dispensing facilities, and the decommissioning of Stage II
controls in existing gasoline facilities may begin. The resources
that are presently being directed to the inspection of the installation
and maintenance of Stage II controls at gasoline dispensing
facilities will be able to be redirected to the inspection of the
decommissioning of Stage II controls. Consequently, it is
anticipated that there will not be any additional costs incurred
associated with initial implementation of this amendment.
(b) On a continuing basis: For the reasons stated above, it is
anticipated that there also will not be any additional costs incurred
on a continuing basis associated the implementation of this
amendment. Once all Stage II controls have been
decommissioned, which is required by the proposed amendment to
occur by December 31, 2018, it will no longer be necessary to
inspect the decommissioning of Stage II controls. Consequently,
once all Stage II controls have been decommissioned, there is the
possibility of a slight cost savings being realized on a continuing
basis associated with a reduction in the regulatory burden.
(c) How much will it cost to administer this program for the first
year? The Division already implements a program for the
control of emissions from gasoline dispensing facilities, including
the inspection of Stage II controls at gasoline dispensing facilities.
Pursuant to the proposed amendment, effective January 1, 2016,
Stage II controls will no longer be required to be installed in new
gasoline dispensing facilities, and the decommissioning of Stage II
controls in existing gasoline facilities may begin. The resources
that are presently being directed to the inspection of the installation
and maintenance of Stage II controls at gasoline dispensing
facilities will be able to be redirected to the inspection of the
decommissioning of Stage II controls. Consequently, the cost to
administer this program for the first year is accounted for in the
Division’s current operating budget.
(d) How much will it cost to administer this program for subsequent
years? For the reasons stated above, it is anticipated that there also
will not be any additional costs incurred to administer this program for subsequent years. Once all Stage II
controls have been decommissioned, which is required by the
proposed amendment to occur by December 31, 2018, it will no
longer be necessary to inspect the decommissioning of Stage II
controls. Consequently, once all Stage II controls have been
decommissioned, there is the possibility of a slight cost savings being realized on a continuing basis in subsequent years.
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? Division of Air
Quality
2. Identify each state or federal statute or federal regulation
that requires or authorizes action taken by the administrative
regulation. KRS 224.01-010, 42 U.S.C. 7511a(b)(3), 7521(a)(5), 7624, 7625,
and 40 C.F.R. 51.126.
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 regulation is to be in effect:
(a) How much will this administrative regulation generate for the state or local government (including cities,
counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate new
revenue.
(b) How much will this administrative regulation generate for the state or local government (including cities,
counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate new
revenue.
(c) How much will it cost to administer this program for the first
year? The Division already implements a program for the control of emissions from gasoline dispensing facilities, including
the inspection of Stage II controls at gasoline dispensing facilities.
Pursuant to the proposed amendment, effective January 1, 2016,
Stage II controls will no longer be required to be installed in new
gasoline dispensing facilities, and the decommissioning of Stage II
controls in existing gasoline facilities may begin. The resources
that are presently being directed to the inspection of the installation
and maintenance of Stage II controls at gasoline dispensing
facilities will be able to be redirected to the inspection of the
decommissioning of Stage II controls. Consequently, the cost to
administer this program for the first year is accounted for in the
Division’s current operating budget.
(d) How much will it cost to administer this program for subsequent
years? For the reasons stated above, it is anticipated that there also
will not be any additional costs incurred to administer this program for subsequent years. Once all Stage II
controls have been decommissioned, which is required by the
proposed amendment to occur by December 31, 2018, it will no
longer be necessary to inspect the decommissioning of Stage II
controls. Consequently, once all Stage II controls have been
decommissioned, there is the possibility of a slight cost savings being realized on a continuing basis in subsequent years.
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601 KAR 2:030. Ignition interlock[devices; the surrendering of license plates].


STATUTORY AUTHORITY: KRS 189A.500 189A.085(1)(b), 189A.340(4)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth’s ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certification, installation, and servicing of ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189A.010 to obtain an ignition interlock device and license. KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(d) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing required information to the court, approving interlock device manufacturers, installers, and service providers and making an approved list available to the public.

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above 0.02%.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(2). Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Petition to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.420.

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, and service provider of the certified ignition interlock devices. The service provider may also be a manufacturer of an ignition interlock device.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle’s engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Permanent lockout" means a feature of the ignition interlock device that prevents a motor vehicle from starting until the ignition interlock device is reset by a service provider or technician.

(18) "Provider representative" means a device provider employee who provides oversight of the provider’s ignition interlock operations within the Commonwealth of Kentucky.

(19) "Retest" means an additional opportunity to provide a breath sample.

(20) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(21) "Rolling retest" means a test of the defendant’s breath alcohol concentration required at random intervals during operation of the motor vehicle.

(22) "Service facility" means the physical location where the service provider’s technicians install, calibrate, or remove ignition interlock devices.

(23) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(24) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(25) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(26) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one’s identity from the ignition interlock system’s camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device; or

(e) Delinquent payment of provider fees.

Section 2. Ignition Interlock Device Applications. (1) The requirements contained in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Petition to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal...
Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Preliminary Order Authorizing Application for Ignition Interlock License and Device, AOC-495.6, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet’s web site at http://drive.ky.gov and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at http://drive.ky.gov.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of $105 pursuant to KRS 189A.420(6). Payment shall be made by cashier’s check, certified check, or money order at one (1) of the cabinet’s regional field offices or the central office in Frankfort.

(b) The application fee shall not be subject to a court’s determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, and 205.712 shall result in the defendant’s ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at http://drive.ky.gov.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet’s web site at http://drive.ky.gov.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant’s vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another’s motor vehicle with express written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles pursuant to subsection (12) of this section.

(15) Upon a defendant’s payment of the appropriate fees, the service provider’s technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant’s county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall state the defendant’s name, the device provider name, and the expiration date of the device.

(17) After ten (10) days’ written notice to the defendant, the provider may remove an ignition interlock device for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20) A defendant shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant’s payment of all fees.

(21) A defendant’s driver history record authorizing the circuit clerk’s office to issue to the defendant a new license without the ignition interlock restriction.

(22) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(23) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFOQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) An ignition interlock device provider certified under this administrative regulation prior to the effective date of the amended administrative regulation shall retain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant’s provider due to that provider’s insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of an investigation, pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for a period of two (2) years after the last entry in the defendant’s history record, pursuant to KRS 186.018, after which time the records shall be disposed of in a manner compliant with relevant privacy.
laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/statistics/ni/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider’s proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts.

(d) Agree to service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver’s Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ.

The provider’s liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining roadside service if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations;

(b) Device lockout due to arrearages;

(c) A defendant’s failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removing of an ignition interlock device by the cabinet, department, or its employees or agents due to verified errors in reporting ignition interlock activities by the provider.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary as a result of tampering by the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2) (a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) If a device is removed or placed in lockdown for arrearages, the device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A 500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation;

(e) Conform to other calibration requirements established by the device manufacturer;

(f) Submit an affidavit that the ignition interlock device sought certification is a button start device;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at http://drive.ky.gov;

(b) Make available an Ignition Interlock Application, TC 94-175, available at http://drive.ky.gov and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177, available at http://drive.ky.gov to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition
Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:
   (a) Photo identification;
   (b) Name, policy number, and expiration date of defendant's automobile insurance policy;
   (c) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicles; and
   (d) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).
(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.
(c) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall not be required to be returned to the site of installation.
(d) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.
(e) If the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall promptly cease the defendant's ignition interlock license.

(3) A device provider shall, within forty-eight (48) hours of receipt of the court's order directing removal of the device, initiate a permanent lockout if the vehicle has not been returned to the facility. If a permanent lockout occurs, the defendant shall notify the device provider immediately to arrange for the return of the vehicle.

(4) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for any of the following:
   (a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;
   (b) The device provider's liability insurance is terminated or cancelled;
   (c) The device provider makes materially false or inaccurate information relating to a device's performance standards;
   (d) There are defects in design, materials, or workmanship causing repeated failures of a device;
   (e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;
   (f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;
   (g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;
   (h) A provider becomes insolvent or files for bankruptcy; or
   (i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner's decisions pursuant to the provisions of KRS Chapter 138.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:
   (a) Providing notice to defendants; and
   (b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that they will be terminating ignition interlock services.
   (b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.
   (c) A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.
   (d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plate pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:
   (a) Conduct a search of the automated vehicle information system;
   (b) Identify motor vehicles owned or jointly owned by the person named on the request; and
   (c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:
   (a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or
   (b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;
(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 1995;
(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August, 1995; and
(d) "Ignition Interlock Application", TC 94-175, August 1995.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's web site at http://drive.ky.gov.

1. That the operator of the vehicle submit to a retest within ten minutes after the first retest;
2. That retests occur during operation of the vehicle; and
3. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceed the maximum allowable alcohol concentration;

(b) The ignition interlock device shall be equipped with a method of immediately warning peace officers:
1. If the retest is not performed; or
2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:
(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and
(b) Be used in accordance with the manufacturer's instructions.

(3) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:
1. Name of the person performing the installation and calibration;
2. Dates of activity;
3. Value and type of standard used;
4. Unit type and identification number of the ignition interlock device checked;
5. Description of the vehicle in which the ignition interlock device is installed including the registration plate number and state, make, model, vehicle identification number, year and color.

(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:
1. Record each time the vehicle is started;
2. Record results of the alcohol concentration test;
3. Record how long the vehicle is operated; and
4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:
1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;
2. That retests continue at intervals not to exceed sixty (60)
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MICHAEL W. HANCOCK, P. E., Secretary
RODNEY KUHL, Commissioner
REBECCA GOODMAN, Executive Director
APPROVED BY AGENCY: August 27, 2015

FILED WITH LRC: September 1, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2015, at 9:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C118, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D Angelo
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.
(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.
(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary: This regulation will amend and replace 601 KAR 2:030, the current ignition interlock 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: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet’s Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.
(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 pursuant to KRS 189A.420(6).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.
(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:
(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at $525,000.
(b) On a continuing basis: $105 per defendant and up to approximately $525,000 annually.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.
(9) TIERING: Is tiering applied? No tiering for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

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 or amendment: No revenues will be generated 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 189A.500(1)(f).
(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 in effect: For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.
(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? Up to approximately $252,000.00.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): No revenues will be generated by this program.
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Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 10:031. Local government regulatory license fees.

RELATES TO: KRS 243.075
STATUTORY AUTHORITY: KRS 243.075(5)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.075(5)(a) requires the department to promulgate administrative regulations to establish a process by which a qualified city or county (that contains a city of the third or fourth class) may estimate any additional policing, regulatory, or administrative expenses incurred by that city or county that are directly and solely related to the sale of alcoholic beverages. This administrative regulation establishes what specific costs and expenses may be subject to reimbursement, and a form is incorporated by reference to calculate and document the expense.

Section 1. Definition. “Qualified city or county” means a city on the registry maintained by the Department for Local Government under KRS 243.075(9)(b), a county containing a city on the registry, or a city or county that had been previously permitted to issue regulatory license fees.

Section 2. Pursuant to KRS 243.075(1)(a), a qualified city or county may impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment therein licensed to sell alcoholic beverages.

Section 3. Allowable costs and expenses. The costs and expenses that may be subject to reimbursement through a regulatory license fee shall directly and solely relate to the discontinuance of prohibition in the qualified city or county, including reasonable costs and expenses of:
(1) Employment, salary, and benefits of the city or county alcoholic beverage control administrator and staff who administer alcoholic beverage control laws;
(2) Office supplies and equipment for the city or county to administer an alcoholic beverage control office;
(3) Office space for an alcoholic beverage control administrator and staff;
(4) Travel costs and expenses for the city or county alcoholic beverage control administrator and staff;
(5) Additional policing expenses that are directly related to the discontinuance of prohibition and shall include only those costs and expenses incurred solely as a result of the discontinuance of prohibition that are over and above any policing expenses previously incurred; and
(6) Miscellaneous costs and expenses solely and directly related to the discontinuance of prohibition, if the following information is included on the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition:
(a) A description of the expenditure;
(b) A detailed explanation of the necessity of the expenditure as it related to the discontinuance of prohibition; and
(c) The cost of the expenditure.

Section 4. To the extent that a qualified city or county incurs the costs or expenses identified in Section 3 of this administrative regulation, a qualified city or county may seek reimbursement only for that portion of the costs and expenses that arise directly and solely because of the discontinuance of prohibition.

Section 5. A qualified city or county shall use the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition to estimate permissible expenses and to establish the fee.

Section 6. The Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition used by a qualified city or county to determine permissible regulatory fees shall be retained pursuant to 725 KAR 1:061.

Section 7. Incorporation by Reference. (1) "Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition", August 2014, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department’s Web site, http://www.abc.ky.gov.

Frederick A. Higdon, Commissioner
Department of Alcoholic Beverage Control

AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 9, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 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 close of business on November 2, 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 creates a mechanism for qualified cities and counties that vote to go wet to establish regulatory licensing fees for the first year after their wet/dry vote.
(b) The necessity of this administrative regulation: KRS 243.075 states that the Department of Alcoholic Beverage Control shall promulgate an administrative regulation to establish how qualified cities and counties estimate regulatory licensing fees for the first year after their wet/dry vote.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation, a qualified city or county may seek reimbursement only for that portion of the costs and expenses that arise directly and solely because of the discontinuance of prohibition.
regulation: It eliminates reference to a city classification that no longer exists.  
(b) The necessity of the amendment to this administrative regulation: The deletion of reference to a city classification system that is no longer in use is necessary.  
(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.  
(d) How the amendment will assist in the effective administration of the statutes: It will eliminate the reference to a city classification that is no longer in existence.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only qualified cities or counties who vote to go wet and wish to levy a regulatory licensing fee to cover the costs of policing, regulating and administration of alcoholic beverages will be 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 steps are necessary as this amendment simply eliminates reference to a city classification system that no longer exists.  
(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 the regulation is applied the same to all qualified cities or counties.

**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? Qualified cities and counties that vote to go wet and wish to establish regulatory licensing fees for the first year after their wet/dry vote.  
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 243.075 requires the Department of Alcoholic Beverage Control to promulgate this administrative regulation.  
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) 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 amendment.  
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment.  
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation amendment.  
(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.  

**PUBLIC PROTECTION CABINET**

**Horse Racing Commission**

**Amendment**

810 KAR 1:018. Medication; testing procedures; prohibited practices.


**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the race participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.  
(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.  
(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.  
(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).  
(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.  
(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 1:040, or 810 KAR 1:110, was present in the sample.  
(a) For the drugs, medications, or substances listed in Section 2(3), 6, or 8 of this administrative regulation or 810 KAR 1:040 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for
the finding to be considered a positive finding.

(b) Positive findings also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; provided, however, that gamma amino butyric acid and cobalt shall not be present in concentrations greater than as provided in Section 4 of this administrative regulation; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and location to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 810 KAR 1:040. [The threshold for furosemide is set forth in Section 6 of this administrative regulation.] The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally affects the health of a horse. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than one hundred nanograms per milliliter in serum or plasma; and

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with

810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substances allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

1. Cimetidine (Tagamet®): 8-20 milligrams per kilogram

2. Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

3. Ranitidine (Zantac®): eight (8) milligrams per kilogram;

4. Sucralfate (Sucralfate): 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(a) The commission veterinarian shall administer furosemide to a horse prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the
furosemide is competing.

(3) Furosemide may be used under the following circumstances:
(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.
(b) The furosemide dosage administered shall not exceed 500 milligrams [mg], nor be less than 150 milligrams [mg].
(c) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in [blood] serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in [blood] serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of [blood] serum or plasma shall constitute a violation of this section.
(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall consult with industry representatives to determine if the cost should be based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse’s best interests to race with furosemide. Notice that a horse will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.
(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, [blood] serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, [blood] serum, or plasma.
(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.
(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered:
(a) Phenytoin - not to exceed two (2) micrograms per milliliter of [blood] serum or plasma;
(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of [blood] serum or plasma; and
(c) Ketoprofen - not to exceed two (2) [ten (10)] nanograms per milliliter of [blood] serum or plasma.
(2) NSAIDs, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 810 KAR 1:040, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.
(3) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3) [one half (0.5)] microgram per milliliter of [blood] serum or plasma shall not constitute a violation of this section.
(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of [blood] serum or plasma shall not constitute a violation of this section.
(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.
laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) The horse shall not be entered into a race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.

3. Medical records for the horse shall document:
   a. Consideration of alternative treatment methods; and
   b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:
   a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;
   b. The date and time of administration;
   c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and
   d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administration Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director either in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 810 KAR 1:028.

(5) (a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(c) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7) (a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association’s claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state stewards.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.

(4) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and
2. Shall not materially alter a claimed horse.

(b) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the testing of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 1:130, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5) (a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and
2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission and in the presence of the commission veterinarian or his designee.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall constitute a separate violation.

(6) Within five (5) business days of receipt of notification by the commission veterinarian or his designee.

(7) The stews shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened;

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log; and
(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select, from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;
2. That the split sample laboratory has agreed to send results to the commission; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;
(b) The sample number; and
(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner’s representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if required.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;
(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
(c) The name of the horse for which the product is intended or prescribed;
(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse’s participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;
(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;
(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;
(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;
(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;
(g) Promptly notifying the commission veterinarian of a repulsive disease or communicable illness in a horse in his or her care;
(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;
(i) Maintaining a medication record and medication status of horses in his or her care;
(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;
(k) Ensuring the fitness of every horse in his or her care to perform credibly at the distance entered;
(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (i) and 4(2);
(m) Ensuring proper bandages, equipment, and shoes;
(n) Ensuring the horse’s presence in the paddock at least twenty (20) minutes prior to post time, or at a time otherwise prescribed, before the race in which the horse is entered;
(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and
(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the
owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;
(b) The type and dosage of drug or medication administered or prescribed;
(c) The name of the trainer of the horse;
(d) The date and time of treatment; and
(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;
(b) The trainer of the horse;
(c) The date, time, amount, and type of medication administered;
(d) The drug or compound administered;
(e) The method of administration; and
(f) The diagnosis.

The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as defined by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;
(b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;
(c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days; and
(d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 810 KAR 1:028(3).

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards may request a full investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicates a positive finding, the commission laboratory may use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have been concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or
(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;
(b) Darbepoetin;
(c) Oxyglobin;
(d) Hemopure®; or
(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or
(b) Endanger the safety of a rider.
(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the following conditions are met:
(a) A treated horse shall not race for a minimum of ten (10) days following treatment;
(b) A veterinarian licensed to practice by the commission shall administer the treatment;
(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and
(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the [Kentucky Horse Racing Commission] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalinizing substance that could alter the [blood] serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) [Blood] serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven [37.0][47.4] millimoles per liter in a horse unless no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.[and]

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the [blood] serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race testing shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the [blood] serum or plasma of the horse. If the commission laboratory determines that the TCO2 level exceeds thirty-seven [37.0][47.4] millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed thirty-seven [37.0][47.4] millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expenses for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse’s level of TCO2, as registered in the original test, is physiologically normal for that horse, the stewards:
   1. Shall permit the horse to race; and
   2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse’s TCO2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

   (a) “Veterinary Report of Horses Treated to be Submitted Daily”, KRC-2, 8/97;
   (b) “Medication History Statement Form”, KHRC 18-01, 4/12;
   (c) “Kentucky Horse Racing Commission Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy”, KHRC 18-02, 8/154/12; and
   (d) “Therapeutic AAS Administration Form”, KHRC 18-03, 4/12.

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works [Ironworks] Parkway, Building B, Lexington, Kentucky 40511; Monday through Friday, 8:30 a.m. to 4:30 p.m. This material is also available on the commission’s Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.
(a) What this administrative regulation does: This administrative regulation governs the administration of drugs, medications and substances to thoroughbred horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage, and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer’s responsibilities, including making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian’s List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that are euthanized at the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2), 230.225(5)(b), and 230.240(2). KRS 230.215(2) states: “(1) The need for this administrative regulation is hereby declared the purpose and intent of this chapter to establish procedures and programs to protect the health and welfare of the undesirable and racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.225(5)(b) states: “(1) The racing commission shall be responsible for developing programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues.” KRS 230.240(2) states: “The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of programs and procedures to fulfill its oversight and regulatory role on such matters as medical practices and integrity issues.” KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to “maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to disburse any funds of associating the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth.” See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215, 230.225, and 230.240. It also provides notice to owners and trainers regarding what medications and practices are, or are not, permitted.

(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: In addition to a number of grammatical, technical, and formatting changes, the amendment: Provides that gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma; Provides that cobalt shall not be present in a concentration greater than 25 parts per billion in serum or plasma; Provides that ketoprofen shall not be present in a post-race sample in a concentration of greater than 2 nanograms per milliliter in serum or plasma; Provides that a finding of phenylbutazone below a concentration of 0.3 microgram per milliliter in serum or plasma shall not constitute a violation; Provides that a finding of ketoprofen below a concentration of 1 nanogram per milliliter in serum or plasma shall not constitute a violation; Provides that a finding of free and conjugated testosterone above 25 nanograms per milliliter in urine or free testosterone above 25 picograms per milliliter in serum or plasma does not constitute a violation in fillies or mare in foal; and Provides that administration time for drugs for horses treated with therapeutic anabolic, androgenic steroids.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of therapeutic medications, illicit drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry wide policy changes and is necessary to ensure that the commission’s regulatory framework accounts for recent developments in medical science.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments specifically address the administration of medications to horses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical industry. It also ensures that Kentucky’s regulatory framework is consistent with industry wide trends in this area, which results in greater uniformity of rules among various racing jurisdictions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects many of the commission’s roughly 18,000 licensees, either directly or indirectly, including owners, trainers, and their employees; veterinarians; jockeys; racing associations and their employees; and the commission itself. It will directly affect owners, trainers and veterinarians, who will have to comply with the amended regulation. It will affect the commission which is charged with enforcing new and existing rules. It will affect the commission’s official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that thoroughbred racing in Kentucky is “free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices.” It will affect jockeys, exercise riders, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 underlying reasons:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation.
regulation or amendment: The owners and trainers and practicing veterinarians will be required to: Comply with the adjusted threshold levels for certain drugs. The commission will be responsible for enforcing the amendments to the medication rules. The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment.

(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 associated with complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy. All licensees, including owners, trainers and racing associations, and the commission will benefit from the wagering public’s increased confidence in the integrity of horse racing; Any individuals who come into contact with racehorses competing in Kentucky will benefit because the regulation provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

(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) In 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: The drug testing described in the regulation is paid for by the racing associations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, the stewards, and the commission.


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

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

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

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

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

PUBLIC PROTECTION CABINET

Horse Racing Commission

( Amendment)

810 KAR 1:028. Disciplinary measures and penalties.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) “Associated person” means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) “Class A drug” means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) “Class B drug” means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) “Class C drug” means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) “Class D drug” means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) “Compensation” means a person who cohabits with or shares living accommodations with an inactive person.

(7) “Inactive person” means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 810 KAR Chapter 1 or KRS Chapter 230.

(8) “NSAID” means a non-steroidal anti-inflammatory drug.

(9) “Primary threshold” means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(a), (b), and (c).

(10) “Schedule” means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040.

(11) “Secondary threshold” means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(b), (c) and (d).

(12) “Withdrawal guidelines” means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbreds, Quarter Horse, Appaloosa, and Arabians as provided in 810 KAR 1:040.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1 shall be adjudicated in accordance with 810 KAR 1:029, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing Commission.
and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6) A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 1:018 may be required to pass a commission-approved examination as determined by the stewards pursuant to 810 KAR 1:012, Section 10, or be placed on the veterinarian's list pursuant to 810 KAR 1:018, Section 18.

(8)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for Post-Race Testing of Claimed Horse form and includes the form in the claim blank envelope, which is deposited in the association's claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TCO2 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TCO2) level exceeding thirty-seven thousand, three hundred forty-two millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TCO2 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:
   1. Shall exercise due care in maintaining and boarding a claimed horse; and
   2. Shall not materially alter a claimed horse.

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and final to adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 1:018 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or 810 KAR Chapter 1 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards' list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.


<table>
<thead>
<tr>
<th>(a) TRAINER</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>Second lifetime offense in any racing jurisdiction</td>
<td>Third lifetime offense in any racing jurisdiction</td>
</tr>
<tr>
<td>One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.</td>
<td>Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.</td>
<td>Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.</td>
</tr>
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</table>

| (b) OWNER | Second lifetime offense in any racing jurisdiction in a horse owned by the same owner | Third lifetime offense in any racing jurisdiction |
|--------------------------------------------------|-----------------------------------------------|
| First offense | Second lifetime offense in any racing jurisdiction in a horse owned by the same owner | Third lifetime offense in any racing jurisdiction |
| Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. | Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for one hundred (100) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. | Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the stewards’ list for one hundred eighty (180) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. |
(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:
1. Class B drugs;
2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and
3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.</td>
<td>Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.</td>
<td>180 to 365 day suspension; AND $2,500 to $5,000 fine.</td>
</tr>
</tbody>
</table>

(c)(b) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards; AND For a cobalt violation, the horse shall be placed on the stewards’ list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.</td>
<td>Disqualification and loss of purse; AND Horse shall be placed on the stewards’ list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
</tr>
</tbody>
</table>

(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:
1. Overage of permitted NSAIDs as follows:
   a. Phenylbutazone in a concentration greater than two (2) micrograms per milliliter through five (5) micrograms per milliliter; and
   b. Flunixin in a concentration greater than twenty (20) nanograms per milliliter through 100 nanograms per milliliter; and
   c. Ketoprofen in a concentration greater than twenty (20) nanograms per milliliter through fifty (50) nanograms per milliliter.
2. Overage of furosemide in a concentration greater than one hundred nanograms per milliliter; and
3. Furosemide not identified when notice made that the horse would run on furosemide; and
4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:
1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter; and
2. Flunixin in a concentration greater than one hundred nanograms per milliliter; and
3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter.
### VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

#### (b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written warning to a $500 fine.</td>
<td>Written warning to a $750 fine.</td>
<td>$500 to $1,000 fine.</td>
</tr>
</tbody>
</table>

#### (c) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. AND For a cobalt violation, the horse shall be placed on the stewards’ list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.</td>
<td>Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>If same horse as first and second offenses, disqualification and loss of purse; AND Disqualification and loss of purse.</td>
</tr>
</tbody>
</table>

#### (d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

#### (5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

#### (a) TRAINER

<table>
<thead>
<tr>
<th>Concentrations of both permitted NSAIDs above the primary threshold.</th>
<th>Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.</th>
<th>Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>Zero to sixty (60) day suspension; AND $500 to $1,000 fine.</td>
<td>Zero to fifteen (15) day suspension; AND $250 to $750 fine.</td>
</tr>
<tr>
<td>Second offense within a 365-day period in any racing jurisdiction</td>
<td>Sixty (60) to 180 day suspension; AND $1,000 to $750 to $1,500 fine.</td>
<td>Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.</td>
</tr>
</tbody>
</table>

#### (b) OWNER

<table>
<thead>
<tr>
<th>Concentrations of both permitted NSAIDs above the primary threshold.</th>
<th>Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.</th>
<th>Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third offense within a 365-day period in any racing jurisdiction</td>
<td>Disqualification and loss of purse.</td>
<td>Disqualification and loss of purse.</td>
</tr>
</tbody>
</table>

#### (6) Class D drug.[Drug]

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

<table>
<thead>
<tr>
<th>One (1) or four (4) offenses within a 365-day period in any racing jurisdiction</th>
<th>Five (5) or more offenses within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to five (5) day suspension; AND $250 to $500 fine.</td>
<td>Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.</td>
</tr>
</tbody>
</table>

Section 5. TCO2 Penalties. Penalties for violations of 810 KAR 1:018, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
<th>Subsequent offenses within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.</td>
<td>Ninety (90) to 180 day suspension; AND $500 to $1,000 fine.</td>
<td>180 to 365 day suspension; AND $1,000 to $2,500 fine.</td>
<td>One (1) year suspension to lifetime ban.</td>
</tr>
</tbody>
</table>

1365
Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 810 KAR 1:018, Section 20(5), or (10), shall be as follows:

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)(a) OWNER</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list from fifteen ($1,500 fine) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
</tr>
</tbody>
</table>

Section 7. Out-of-Competition Testing. The penalties established in 810 KAR 1:110, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) TRAINER</td>
<td>Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.</td>
<td>180 to 365 day suspension; AND $10,000 to $20,000 fine.</td>
</tr>
</tbody>
</table>

(2) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse. AND If same horse as first offense, horse shall be placed on the stewards’ list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td></td>
</tr>
</tbody>
</table>

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be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds;

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

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

(a) "Request for Post-Race Testing of Claimed Horse”, August 2014; and

(b) "Claim Blank envelope”, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email Susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes penalties for violations of 810 KAR 1:018 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states: "[I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth...KRS 230.240(2) states: The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 810 KAR 1:018, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and
(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 relate directly to proposed changes to the medication regulation: 810 KAR 1:018; Establishes penalties for findings of cobalt and gamma amino butyric acid in concentrations above the proposed thresholds; and Amends the threshold for ketoprofen to be consistent with the medication regulation.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that the penalty regulation is consistent with the medication regulation and to ensure that the penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and, in compliance therewith, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.
(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.
(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 participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the questions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no costs associated with implementing this administrative regulation.
(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.
(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

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

PUBLIC PROTECTION CABINET
Horse Racing Commission
(AMENDMENT)

810 KAR 1:040. Drug, medication, and substance classification schedule and withdrawal guidelines.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances contained therein. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Standardbred[,] Quarter Horse, Appaloosa, and Arabian, KHRC 40-02, shall provide certain mandatory treatment requirements and guidelines and advice on withdrawal intervals as contained therein.
Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 40-01, August 2015; and
(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian", KHRC 40-02, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m., or on the commission’s Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 the deadline, this hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates the Kentucky Horse Racing Commission Drug, Substance Classification Schedule (the “Schedule”) and the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian (the “Withdrawal Guidelines”) by reference. Both documents are affected by scientific research and, thus, should be amended and updated on an ongoing basis based on developments in medical science. The Schedule establishes a classification system of regulated substances, and those classifications are then used to determine the appropriate penalty if there is a violation of 810 KAR 1:018 or 810 KAR 1:110. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.
(b) The necessity of this administrative regulation: The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be levied if the substance in question is administered in violation of 810 KAR 1:018 or 810 KAR 1:110. The Withdrawal Guidelines are necessary to provide guidance to licensees regarding the regulated administration of certain medications and substances prior to a horse competing in a race in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, “promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth.” KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The Schedule classifies regulated substances to give notice to licensees and to allow the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Schedule classifies regulated substances, thereby providing notice to licensees and allowing the commission to levy the appropriate penalty in the event of a violation of 810 KAR 1:018 or 810 KAR 1:110. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(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 makes the following substantive changes to the administrative regulation: I. Withdrawal Guidelines: Present the withdrawal guidelines and thresholds in table format to make the documents easier to read and understand; Adopt threshold and withdrawal guideline for albuterol; Amend withdrawal guideline for isoflupredone; Amend primary threshold and adopt secondary threshold for ketoprofen; Amend secondary threshold for phenytoin; Clarify surveillance requirement for procaine penicillin; Provide additional information on withdrawal guidelines for acetaminophen, betamethasone; and Amend withdrawal guideline for flunixin. II. Classification Schedule: Amend descriptions of classes for clarity and accuracy; Add Aminorex as Class "A" drug; and Remove Levamisole/Tetramisole as Class "A" drug.
(b) The necessity of the amendment to this administrative regulation: The amendments are based on current scientific research and are based on recommendations of the Racing Medication and Testing Consortium (“RMTC”). The RMTC is a national organization dedicated to the development, promotion and coordination of policies, research, and educational programs that seek to ensure the fairness and integrity of horse racing and the health and welfare of racehorses and its participants at the national level. The class descriptions in the current classification schedule are amended for clarity and accuracy. The thresholds and withdrawal guidelines are presented in table format to make the documents easier to read and understand.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will ensure that the commission regulates the use of medication and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain regulated substances. Presenting the information in the documents in table format is intended to make the documents easier to read and understand. Amending the descriptions of the classes will provide greater clarity and accuracy.

(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 licensed owners, trainers, and veterinarians. It will also affect the commission as it regulates the use of medication and other substances.
substances on horses competing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The commission will use the Schedule to determine the appropriate penalties for violations of 810 KAR 1:018 and 810 KAR 1:110 and take into consideration compliance with the Withdrawal Guidelines when imposing a penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not result in any additional costs to any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

(a) Initially: There are no anticipated costs to the commission.

(b) In a continuing basis: There are no anticipated costs to the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement or enforce the amendments to this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370, 230.380,

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have 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? 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 will be no costs associated with the implementation of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of the amendments to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET

Horse Racing Commission

(Amendment)

811 KAR 1:090. Medication; testing procedures; prohibited practices.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission (commission) to promulgate administrative regulations prescribing the conditions under which all legitimate horse racing and wagering thereon is allowed to be conducted in Kentucky. KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) “AAS” or “anabolic steroid” means an anabolic androgenic steroid.

(2) “Administer” means to apply to or cause the introduction of a substance into the body of a horse.

(3) “Commission laboratory” means a laboratory chosen by the commission to test biologic specimens from horses [a horse] taken under the supervision of the commission veterinarian.

(4) “Location under the jurisdiction of the commission” means a licensed race track or a training center as described in KRS 230.260(5).

(5) “Permitted NSAIDs” means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) “Positive finding” means the commission laboratory has determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation. 811 KAR 1:093, or 811 KAR 1:240, was present in the sample.

(a) For the drugs, medications or substances listed in Section 2(3), 6, or 8 of the administrative regulation or 811 KAR 1:093 for which an established concentration level is provided, it shall be necessary to have [a positive finding means a finding] in excess of the established concentration level as provided for the finding to be considered a positive finding [prescribed in those sections].

(b) Positive finding [findings] also includes [include].

1. Substances present in the horse in excess of concentrations at which the substances could (might) occur naturally; provided, however, that gamma amino butyric acid and cobalt shall not be present in concentrations greater than as provided in Section 2(4) of this administrative regulation; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) “Primary sample” means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.
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(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen taken from horses[a horse] under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided[specifically permitted] in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:
   (a) Is a narcotic;
   (b) Could serve as an anesthetic or tranquilizer;
   (c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse;
   (d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 811 KAR 1:093. [The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDS are set forth in Section 8 of this administrative regulation.]

(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.
   (a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms/milliliter in serum or plasma; and
   (b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof prohibited by this section[if]:
   (a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and
   (b) The specimen was tested by the split sample laboratory.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule[as provided in 811 KAR 1:093, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance[injectables] allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission[if] has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other, than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;
(2) The treatment is not injected; and
(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

   (1) Cimetidine (Tagamet®): 8-20 milligrams per kilogram[mg/kg];
   (2) Omeprazole (Gastrocap®): two and two-tenths (2.2) grams;
   (3) Ranitidine (Zantac®): eight (8) milligrams per kilogram[mg/kg]; and
   (4) Sucralfate (Sucralfate): 2.4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

   (2)(a) The commission veterinarian shall administer furosemide prior to a race (betting or nonbetting), time trial, or official workout.
   (b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

   (c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the following circumstances[established in this section.]

   (a) Furosemide shall be administered on the grounds of the racing association at which the horse will compete or work.

   (b) Except for qualifying races, furosemide shall be administered by a single intravenous injection, not less than four (4) hours prior to post time of the race, time trial, or official workout, in which the horse is entered.
The furosemide dosage administered shall not exceed 500 milligrams[mg], nor be less than 150 milligrams[mg].

(d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in[blood] serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in[blood] serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notice, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine,[blood] serum, or plasma does not show a detectable concentration of furosemide in the post-race urine,[blood] serum, or plasma.

(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post-race:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of serum or plasma,

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of serum or plasma,

(c) Ketoprofen - not to exceed two (2) nanograms per milliliter of serum or plasma.

(2) NSAIDs, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 811 KAR 1:093, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

(3) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(c) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(a) A finding of flunixin below a concentration of three (3) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(b) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

(c) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(d) A horse that has been administered an NSAID shall be subject to collection of a biologic specimen under the supervision of the commission veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse. NSAIDs listed in this section may be used not less than twenty-four (24) hours prior to post time for the race for which the horse is entered if the concentration in the horse's specimen does not exceed the levels set forth in this section when tested post-race.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone[deas and conjugated]: 1 nanograms per milliliter[ng/ml] in urine.
or free boldenone 200 picograms per milliliter [pg/ml] in [blood] serum or plasma; and
2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine shall not be permitted.

(b) Nandrolone (free and conjugated):
1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter [ng/ml] in urine or free nandrolone fifty (50) picograms per milliliter [pg/ml] in [blood] serum or plasma; and
2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter [ng/ml] in urine or free nandrolone fifty (50) picograms per milliliter [pg/ml] in [blood] serum or plasma; and
3. In male horses other than geldings, forty-five (45) nanograms per milliliter [ng/ml] of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrane-3β, 17α-diol of >1:1.

(c) Testosterone (free and conjugated):
1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter [ng/ml] in urine or free testosterone twenty (20) nanograms per milliliter [ng/ml] in [blood] serum or plasma; and
2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter [ng/ml] in urine or free testosterone twenty-five (25) picograms per milliliter [pg/ml] in [blood] serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:
1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;
2. A relevant specimen is taken from the horse;
3. The sample is tested for AAS by the commission laboratory from the approved list established by the commission at the expense of the owner of the horse; and
4. The commission has received a report from the commission laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) The horse shall not be entered to race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.
1. A therapeutic AAS shall be administered by a licensed veterinarian.
2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.
3. Medical records for the horse shall document:
   a. Consideration of alternative treatment methods; and
   b. The necessity for administering the therapeutic AAS.
4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:
   1. In geldings and male horses, the amount in milligrams, route, and site of administration;
   2. The date and time of administration;
   3. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and
   d. The diagnosis and justification for administration of the therapeutic AAS to the horse.
5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are “Class B” drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 1:095.

(5)(a) The detection of a therapeutic AAS or metabolite derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)(a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association’s claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the presiding judge.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.

(d) While awaiting test results, a claimant:
1. Shall exercise due care in maintaining and boarding a claimed horse; and
2. Shall not materially alter a claimed horse.

(e) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 811 KAR 1:260, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:
(a) Taken from a horse he owns or trains by the commission veterinarian; and
(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:
1. Be supplied by the trainer; and
2. Applied only with the permission and in the presence of the
Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened;

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log; and

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a laboratory selected and approved by the commission to perform the analysis;

(b) The request shall be made in writing and delivered to the commission representative within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory;

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, and shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;
2. That the split sample laboratory has agreed to send results to the commission; and
3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;
(b) The sample number;
(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof, and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;
(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
(c) The name of the horse for which the product is intended or prescribed;
(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse’s participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;
(b) Using the services of those veterinarians licensed by the commission to attend to horses on association

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grounds;
(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;
(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neuritis (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;
(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;
(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;
(h) Promptly reporting the serious injury or death of a horse in his or her care, at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation governing postmortem examinations;
(i) Maintaining a medication record and medication status of horses in his or her care;
(j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;
(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;
(l) Ensuring proper bandages, equipment, and shoes;
(m) Ensuring the horse’s presence in the paddock at least one (1) hour prior to post time, or at a time otherwise prescribed, by racing officials before the race in which the horse is entered;
(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges; and
(o) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges.
(2) A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:
(a) The name of the horse treated;
(b) The type and dosage of drug or medication administered or prescribed;
(c) The name of the trainer of the horse;
(d) The date and time of treatment; and
(e) Other pertinent treatment information requested by the commission veterinarian.
(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.
(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.
(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.
(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.
(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.
(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:
(a) The name of the horse;
(b) The trainer of the horse;
(c) The date, time, amount, and type of medication administered;
(d) The drug or compound administered;
(e) The method of administration; and
(f) The diagnosis.
(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian’s List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.
(2) A horse may be removed from the veterinarian’s list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.
(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian or a licensed veterinarian approved by the commission.
(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:
(a) First incident - fourteen (14) days;
(b) Second incident within a 365-day period - thirty (30) days;
(c) Third incident within a 365-day period - 180 days; and
(d) Fourth incident within a 365-day period - barred from racing for life.
(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.
(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.
(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.
(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.
(3) After the commission laboratory issues a positive finding, the executive director of the commission or the judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.
(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.
(5) If the purse money has been distributed, the judges shall
order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse;

(b) The use of which may endanger the safety of the driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) If the following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Kentucky Horse-Racing Commission Veterinary Report Horses Treated With Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the blood serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A blood serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven (37.0) millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0) millimoles per liter in a horse to which furosemide has been administered; except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO2 Testing and Procedures. (1)(a) The presiding judge or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the blood serum or plasma of the horse. The winning horse and other horses, as selected (directed) by the presiding judge, may be retested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race and post-race testing shall be done at a reasonable time, place, and manner as directed by the presiding judge in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the blood serum or plasma of the horse. The laboratory determines that the TCO2 exceeds thirty-seven (37.0) millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0) millimoles per liter in a horse to which furosemide has been administered, the executive director of the commission shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds thirty-seven (37.0) millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0) millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian. However, the collection of a split sample for TCO2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(f) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed thirty-seven (37.0) millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0) millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse’s usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse’s level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that
the horse's TCO2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may[that died during a pari-mutuel race shall] constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97;
(b) "Simplified Chain of Custody Form", KHRC 18-01, 4/12;
(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 8/15[4/12]; and
(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation governs the administration of drugs, medications and substances to standardbred horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage, and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer’s responsibilities, making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian’s List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that die or are euthanized on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2), 230.225(5)(b), and 230.240(2). KRS 230.215(2) states: It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth... KRS 230.225(5)(b) states: In the Commonwealth, the racing commission shall be responsible for [d]eveloping programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues... KRS 230.240(2) states: The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants acts to horses prior to participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes... Without this administrative regulation, the commission would be unable to effectively fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which harness racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth... KRS 230.225(5)(b) establishes that the commission is responsible for developing programs and procedures to aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues. KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to participating in a race. This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unscrupulous horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth..." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215, 230.225, and 230.240. It also provides notice to owners and trainers regarding what medications and practices are, or are not, permitted.

(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: In addition to a number of grammatical, technical, and
formatting changes, the amendment: Provides that gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma; Provides that cobalt shall not be present in a concentration greater than 25 parts per billion in serum or plasma; Provides that ketoprofen shall not be present in a post-race sample in a concentration of greater than 2 nanograms per milliliter in serum or plasma; Provides that a finding of phenylbutazone below a concentration of 0.3 microgram per milliliter in serum or plasma shall not constitute a violation; Provides that a finding of ketoprofen below a concentration of 1 nanogram per milliliter in serum or plasma shall not constitute a violation; Provides that a finding of free and conjugated testosterone above 55 nanograms per milliliter in urine or free testosterone above 25 picograms per milliliter in serum or plasma does not constitute a violation in fillies or mare in foal; and Provides a restricted administration time of 60 days for horses treated with therapeutic anabolic, androgenic steroids.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of therapeutic medications, illicit drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry-wide policy changes and is necessary to ensure that the commission’s regulatory framework accounts for recent developments in medical science.

c) How the amendment conforms to the content of the authorizing statute: The amendments specifically address the administration of medications to horses.

d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical industry. It also ensures that Kentucky’s regulatory framework is consistent with industry wide trends in this area, which results in greater uniformity of rules among various racing jurisdictions.

(3) List the type and number of units, persons, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect many of the commission’s roughly 18,000 licensees, either directly or indirectly, including owners, trainers, and their employees; veterinarians; drivers; racing associations and their employees; and the commission itself. It will directly affect owners, trainers and veterinarians, but it will indirectly affect the racing associations and the commission as well. It will affect the commission which is charged with administering and enforcing the rules. It will affect the commission’s official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that harness racing in Kentucky is “free of any percept, inexcusable, dishonorable, unprincipled horse racing practices.” It will affect drivers, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 owners and trainers and practicing veterinarians will be required to: Comply with the adjusted threshold levels for certain drugs. The commission will be responsible for enforcing the amendments to the medication rules. The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment.

(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 associated with complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy. All licensees, including owners, trainers and racing associations, and the commission will benefit from the wagering public’s increased confidence in the integrity of horse racing; Any individuals who come into contact with racehorses competing in Kentucky will benefit because the regulation provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

(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: The drug testing described in the regulation is paid for by the racing associations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be affected by this administrative regulation: The Kentucky Horse Racing Commission.


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

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

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

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

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

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:
811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances of the types herein. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian, KHRC 40-02(03-01), shall provide certain mandatory treatment requirements and guidance and advice on withdrawal intervals as contained therein.

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

(a) “Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule”, KHRC 40-01, August 2015[December 2013]; and

(b) “Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian”, KHRC 40-02, August 2015[03-01, December 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m., or on the commission’s Web site at http://khrc.ky.gov.

ROBERT M. BECK JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in participating at this hearing shall notify the Kentucky Horse Racing Commission 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the Kentucky Horse Racing Commission Uniform Drug, Medication and Substance Classification Schedule (the “Schedule”) and the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa and Arabian (the “Withdrawal Guidelines”) by reference. Both documents are necessary to provide guidance to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(b) The necessity of this administrative regulation: The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be applied if the substances are administered in violation of 811 KAR 1:090 or 811 KAR 1:240. The Withdrawal Guidelines are necessary to provide guidance to licensees regarding the regulated administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, “promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth.” KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The Schedule classifies regulated substances to give notice to licensees and to allow the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The Schedule classifies regulated substances, thereby providing notice to licensees and allowing the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(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 makes the following substantive changes to the existing administrative regulation: I. Withdrawal Guidelines: Present the withdrawal guidelines and thresholds in table format to make the documents easier to read and understand; Adopt threshold and withdrawal guideline for flunixin. II. Classification Schedule: Amend descriptions of classes for clarity and accuracy; Add Aminorex as Class “A” drug; and
Remove Levamisole/Tetramisole as Class "A" drug.

(b) The necessity of the amendment to this administrative regulation: The amendments are based on current scientific research and are based on recommendations of the Racing Medication and Testing Consortium ("RMTC"). The RMTC is a national organization dedicated to the development, promotion and coordination of policies, research and educational programs that seek to ensure the fairness and integrity of horse racing and the health and welfare of racehorses and its participants at the national level. The class descriptions included in the classification schedule are amended for clarity and accuracy. The thresholds and withdrawal guidelines are presented in table format to make the documents easier to read and understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will ensure that the commission regulates the use of medications and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain regulated substances. Presenting the information in the documents in table format is intended to make the documents easier to read and understand. Amending the descriptions of the classes will provide greater clarity and accuracy.

(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 licensed owners, trainers, and veterinarians. It will also affect the commission as it regulates the use of medication and other substances on horses competing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The commission will use the Schedule to determine the appropriate penalties for violations of 811 KAR 1:090 and 811 KAR 1:240 and take into consideration compliance with the Withdrawal Guidelines when imposing a penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not result in any additional costs to any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

(a) Initially: There are no anticipated costs to the commission.

(b) On a continuing basis: There are no anticipated costs to the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement or enforce the amendments to this administrative regulation.

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

(b) State whether or not this administrative regulation established any fees or directly or indirectly increase 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. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: Kentucky Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have 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? 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 will be no costs associated with the implementation of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of the amendments to this administrative regulation.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(Amendment)

811 KAR 1:095. Disciplinary measures and penalties.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the judges and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation,
or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 1 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone and flunixin, and ketoprofen provided in 811 KAR 1:090, Section 8(2)(c), (3)(c), and (4)(c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 1:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 1:090, Section 8(3)(c).

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Standardbreds as provided in 811 KAR 1:093.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 138.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Consensus Conference, or their respective successors.

(3) The judges and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the judges and the commission as a mitigating factor to be used in determining violations and penalties.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the judges or the commission in a ruling or order.

(6) Written or printed notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice shall be posted immediately at the office of the association and sent to the commission, the United States Trotting Association, and the Association of Racing Commissioners International, or their successors, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 811 KAR 1:090 may be required to pass a commission-approved examination as determined by the judges pursuant to 811 KAR 1:020, Section 5, or be placed on the veterinarian's list pursuant to 811 KAR 1:090, Section 18.

(8) A person who claims a horse may void the claim if the post-race test indicates a Class A, B, C drug violation, or a TCO2 level exceeding thirty-seven (37.0) millimoles per liter and receive reimbursement for reasonable costs associated with the claim as provided in 811 KAR 1:035, Section 3(14)(a)(3).

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 5 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 1:090 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found responsible for any violation of KRS Chapter 230 or 811 KAR Chapter 1 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the judges' list for a period of time, the judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(15) Any person who has been fined under this administrative regulation shall be suspended until the fine has been paid in full.

(16) A fine shall not be paid directly or indirectly by a person other than the person upon whom it is imposed and any payment made shall not serve to abate or satisfy any penalty imposed.

(17) If the penalty is suspended, the driver may drive in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(18) A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(19) An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(20) An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(21) If a person is excluded from a pari-mutuel association by the association, the commission shall be notified.

(22) A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association.
association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified, or excluded person at or on the track during the progress of a race meeting.

(23) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;
(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or
(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(24) A penalty imposed by the United States Trotting Association or the racing commission, or other governing body, of any racing jurisdiction shall be recognized and enforced by the commission unless application is made for a hearing before the commission, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the judges and by the commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender’s prior record listing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A licensee who commits a violation classified as a Category 1 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from zero days to thirty (30) days; and
(b) Payment of a fine not to exceed $5,000.

(2) A licensee who commits a violation classified as a Category 2 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days; and
(b) Payment of a fine not to exceed $10,000.

(3) A licensee who commits a violation classified as a Category 3 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation; and
(b) Payment of a fine up to $50,000.

(4) A violation of KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C, or D Drugs. (1) Class A Drugs: (a) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.</td>
<td>Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.</td>
<td>Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.</td>
</tr>
</tbody>
</table>

(b) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense in any racing jurisdiction in a horse owned by the same owner</th>
<th>Third offense in any racing jurisdiction in a horse owned by the same owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; AND Horse shall be placed on the judges’ list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>Disqualification and loss of purse; AND Horse shall be placed on the judges’ list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>Disqualification and loss of purse; AND Horse shall be placed on the judges’ list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
</tr>
</tbody>
</table>

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;
2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliters; and
3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirty (30) to sixty (60) days suspension; AND $500 to $1,000 fine.</td>
<td>Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.</td>
<td>180 to 365 day suspension; AND $2,500 to $5,000 fine.</td>
</tr>
</tbody>
</table>

(c) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; [AND] Horse may be required to pass a commission-</td>
<td>Disqualification and loss of purse; [AND] Horse may be required to pass a commission-</td>
<td>Disqualification and loss of purse; [AND] Horse shall be placed on the judges’ list for</td>
</tr>
</tbody>
</table>

| Year suspension; AND $10,000 to $25,000 fine. | Year suspension; AND $10,000 to $25,000 fine. | Year suspension; AND $10,000 to $25,000 fine. |

| Horse may be | Horse may be | Horse shall be |
| required to pass | required to pass | placed on the |
| a commission- | a commission- | judges’ list for |
| AND | AND | |

| Race meet. | Race meet. | Race meet. |
(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter[5.0 mcg/ml];
2. Flunixin in a concentration greater than one hundred nanograms per milliliter[100 ng/ml]; and
3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter[50 ng/ml].

(b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to ten (10) day suspension; AND $500 to $1,500 fine.</td>
<td>Second offense within a 365-day period in any racing jurisdiction</td>
<td>Third offense within a 365-day period in any racing jurisdiction</td>
</tr>
<tr>
<td>Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.</td>
<td>Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.</td>
<td></td>
</tr>
</tbody>
</table>

(c) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>Second offense within a 365-day period in any racing jurisdiction</td>
<td>Third offense within a 365-day period in any racing jurisdiction</td>
</tr>
<tr>
<td>Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the judges' list for sixty (60) days and may be required to pass a commission-approved examination before being determined by the judges.</td>
<td>Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
</tr>
</tbody>
</table>

(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:
   a. Phenylbutazone in a concentration greater than two (2) micrograms per milliliter[2 mcg/ml] through five (5) micrograms per milliliter[5 mcg/ml]; and
   b. Flunixin in a concentration greater than two (2) nanograms per milliliter[2 ng/ml] through twenty (20) nanograms per milliliter[20 ng/ml]; and
   c. Ketoprofen in a concentration greater than two (2) nanograms per milliliter[2 ng/ml] through fifty (50) nanograms per milliliter[50 ng/ml]; and
2. Overage of furosemide in a concentration greater than one hundred nanograms per milliliter;
3. Furosemide not identified when notice made that the horse would run on furosemide; and
4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written warning to a $500 fine.</td>
<td>Written warning to a $750 fine.</td>
<td>$500 to $1,000 fine.</td>
</tr>
</tbody>
</table>

(c) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
</tr>
</tbody>
</table>

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.
<table>
<thead>
<tr>
<th>(a) TRAINER</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>Zero to sixty (60) day suspension; AND $500 to $1,000 fine.</td>
<td>Zero to fifteen (15) day suspension; AND $250 to $750 fine.</td>
<td>Zero to five (5) day suspension; AND $250 to $500 fine.</td>
</tr>
<tr>
<td>Second offense within a 365-day period in any racing jurisdiction</td>
<td>Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.</td>
<td>Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.</td>
<td>Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.</td>
</tr>
<tr>
<td>Third offense within a 365-day period in any racing jurisdiction</td>
<td>180 to 365 day suspension; AND $2,500 to $5,000 fine.</td>
<td>Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.</td>
<td>Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(b) OWNER</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Third offense within a 365-day period in any racing jurisdiction</td>
<td>Disqualification and loss of purse.</td>
<td>Disqualification and loss of purse.</td>
<td>No Penalty.</td>
</tr>
</tbody>
</table>

(6) Class D drugs[dag]. (a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

| One (1) to four (4) offenses within a 365-day period in any racing jurisdiction | Five (5) or more offenses within a 365-day period in any racing jurisdiction |

Section 5(6) TCO2 penalties. In any instance of a positive pre-race TCO2 result, the horse shall be scratched. In addition, penalties for violations of 811 KAR 1:090, Section 20(6), (7), or (8) shall be as follows:

<table>
<thead>
<tr>
<th>First offense involving a pre-race test result</th>
<th>First offense involving a post-race test result</th>
<th>Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
<th>Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to five (5) day suspension; AND $250 to $500 fine.</td>
<td>Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.</td>
<td>Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.</td>
<td>180 to 365 day suspension; AND $3,000 to $5,000 fine.</td>
</tr>
</tbody>
</table>

Section 6(3) TCO2 penalties. In any instance of a positive pre-race TCO2 result, the horse shall be scratched. In addition, penalties for violations of 811 KAR 1:090, Section 20(6), (7), or (8) shall be as follows:

<table>
<thead>
<tr>
<th>First offense involving a pre-race test result</th>
<th>First offense involving a post-race test result</th>
<th>Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
<th>Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Penalty.</td>
<td>No Penalty.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be ineligible from fifteen (15) to sixty (60) days.</td>
<td>Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be ineligible from sixty (60) to 180 days.</td>
</tr>
</tbody>
</table>

Section 6(3) Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 811 KAR 1:090, Section 20(5), (9), or (10) shall be as follows:

<table>
<thead>
<tr>
<th>First offense involving a pre-race test result</th>
<th>First offense involving a post-race test result</th>
<th>Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
<th>Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Penalty.</td>
<td>No Penalty.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be ineligible from fifteen (15) to sixty (60) days.</td>
<td>Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be ineligible from 180 to 365 days.</td>
</tr>
</tbody>
</table>
(1) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.</td>
<td>Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.</td>
<td>180 to 365 day suspension; AND $10,000 to $20,000 fine.</td>
</tr>
</tbody>
</table>

(2) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
<td>Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the judges’ list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.</td>
</tr>
</tbody>
</table>

Section 7.8. Out-of-Competition Testing. The penalties established in 811 KAR 1:240, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8.9. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:
   (a) Assume the inactive person’s responsibilities at a location under the jurisdiction of the commission; (b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or (c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:
   (a) Be paid a salary directly or indirectly by or on behalf of the inactive person; (b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration; (c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or (d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

A person who is responsible for the care, training or veterinary services provided to a horse formerly under the care, training or veterinary services of an inactive person shall:
   (a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky; (b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person; (c) Not use the services, directly or indirectly, of current employees of the inactive person; and (d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person’s license.

Section 9.14. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(6), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(4) A person who violates 811 KAR 1:090, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

(5) An association in violation of Section 2(20), (21), (22), or (23) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days and payment of a fine up to $5,000 in keeping with the seriousness of the violation and the facts of the case.

Section 10.14. Disciplinary Measures by Judges. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

   (1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race; (2) Suspend or revoke a person’s licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case; (3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds; and (4) Payment of a fine in an amount not to exceed $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 11.14. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

   (a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race; (b) Suspend or revoke a person’s licensing privileges for a
period of time of not more than five (5) years in proportion to
the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed
toward the interference of the orderly conduct of a race or race
meeting, or person whose presence is found by the commission
to be inconsistent with maintaining the honesty and integrity of horse
racing, to be excluded or ejected from association grounds or a
portion of association grounds; and

(d) Payment of a fine of up to $50,000 as deemed appropriate
by the commission in keeping with the seriousness of the violation
and the facts of the case.

(2) Upon appeal of a matter determined by the judges the
commission may:

(a) Order a hearing de novo of a matter determined by the
judges; and

(b) Reverse or revise the judges’ ruling in whole or in part,
except as to findings of fact by the judges’ ruling regarding matters
that occurred during or incident to the running of a race and as to
the extent of disqualification fixed by the judges for a foul in a race.

ROBERT M. BECK, Jr., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
October 21, 2015 at 10:00 a.m., at the offices of the Kentucky
Horse Racing Commission, 4063 Iron Works Parkway, Building B,
Lexington, Kentucky 40511. Individuals interested in being heard at
this hearing shall notify the Kentucky Horse Racing Commission in
writing five (5) working days prior to the hearing, of their intent to
attend. If no notification of intent to attend the hearing is received
by that date, the hearing may be cancelled. This hearing is open to
the public. Any person who wishes to be heard will be given an
opportunity to comment on the proposed administrative regulation.
A transcript of the public hearing will not be made unless a written
request for a transcript is made. If you do not wish to be heard at
the public hearing, you may submit written comments on the
proposed administrative regulation. Written comments shall be
accepted through close of business November 2, 2015. Please
send written notification of intent to be heard at the public hearing
or written comments on the proposed administrative regulation to
the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel,
Kentucky Horse Racing Commission, 4063 Iron Works Parkway,
Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax
(859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Susan B. Speckert
(1) Provide a brief summary of:

(a) What this administrative regulation does: This
administrative regulation establishes penalties for violations of 811
KAR 1:090 and other regulations and statutes thereby giving
licensees and other participants notice of consequences of
violations.

(b) The necessity of this administrative regulation: This
administrative regulation is necessary to fulfill the statutory mandates found in
KRS 230.215(2) and KRS 230.240(2).
KRS 230.215(2) states: 

(1) It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and
welfare, to vest in the racing commission forceful control of horse
racing in the Commonwealth with plenary power to promulgate
administrative regulations prescribing conditions under which all
legitimate horse racing and wagering thereon is conducted in the
Commonwealth...KRS 230.240(2) states: The racing commission shall promulgate administrative regulations for effectively
preventing the use of improper devices, and restricting or
prohibiting the use and administration of drugs or stimulants or
other improper acts to horses prior to the horse participating in a
race. Without this administrative regulation, the commission would
be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 230.215(2) mandates that the
commission establish the conditions under which harness racing
and pari-mutuel wagering thereon shall be conducted in Kentucky
and charges it to, “promulgate administrative regulations
prescribing conditions under which all legitimate horse racing and
wagering thereon is conducted in the Commonwealth.” KRS
230.240(2) further requires the commission to promulgate
administrative regulations restricting or prohibiting the
administration of drugs or stimulants or other improper acts to
horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by
providing a means to enforce its rules and regulations. Along with
811 KAR 1:090, this regulation allows the commission to “maintain
horse racing at horse race meetings in the Commonwealth of the
highest quality and free of any corrupt, incompetent, dishonest, or
unprincipled horse racing practices, and to regulate and maintain
horse racing at race meetings in the Commonwealth so as to
disseminate any cloud of association with the undesirable and
maintain the appearance as well as the fact of complete honesty
and integrity of horse racing in the Commonwealth.” See KRS
230.215.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: KRS 230.215
articulates the commission’s statutory mandate to regulate horse
racing in Kentucky “free of any corrupt, incompetent, dishonest, or
unprincipled horse racing practices, and to regulate and maintain
horse racing at race meetings in the Commonwealth so as to
disseminate any cloud of association with the undesirable and
maintain the appearance as well as the fact of complete honesty
and integrity of horse racing in the Commonwealth.” KRS 230.240
requires the commission to promulgate administrative regulations
restricting or prohibiting the administration of drugs or stimulants or
other improper acts to horses prior to the horse participating in a
race. This regulation enables the commission to fulfill its statutory mandates by
providing a means to enforce its rules and 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: The amendments relate directly to proposed changes to the
medication regulation: 811 KAR 1:090; Establishes penalties for
findings of cobalt and gamma amino butyric acid in concentrations above the proposed thresholds; and Amends the
threshold for ketoprofen to be consistent with the medication
regulation.

(b) The necessity of the amendment to this administrative
regulation: The amendments are necessary to ensure that the
penalty regulation is consistent with the medication regulation and
to ensure that the penalties are appropriate and clear. The
amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the
authorizing statutes: KRS 230.215(2) grants the commission the
authority to regulate conditions under which harness racing and
pari-mutuel wagering thereon shall be conducted in Kentucky and
charges it to, “promulgate administrative regulations prescribing
conditions under which all legitimate horse racing and wagering
thereon is conducted in the Commonwealth.” KRS 230.240(2)
requires the commission to promulgate administrative regulations
restricting or prohibiting the administration of drugs or stimulants or
other improper acts to horses prior to the horse participating in a
race. This regulation enables the commission to fulfill its statutory
mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective
administration of the statutes: This regulation enables the
commission to fulfill its statutory mandates by providing a means to
enforce its rules and regulations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There are no costs associated with this regulation. As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation.

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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


(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with 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 (+/-):

PUBLIC PROTECTION CABINET
Horse Racing Commission
(Amendment)

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances contained therein. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Standardbred[,] Quarter Horse, Appaloosa, and Arabian, KHRC 40-02, shall provide certain mandatory treatment requirements and guidance and advice on withdrawal intervals as contained therein.

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

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 40-01, August 2015[December 2013]; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Standardbred[,] Quarter Horse, Appaloosa, and Arabian", KHRC 40-02, August 2015[December 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m., or on the commission's Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to
the contact person below.

CONTACT PERSON: Susan B. Specket, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.specket@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Specket

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the Kentucky Horse Racing Commission Uniform Drug, Medication and Substance Classification Guidelines (the “Schedule”) and the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa and Arabian (the “Withdrawal Guidelines”) by reference. Both documents are affected by scientific research and, thus, should be amended and updated on an ongoing basis based on developments in medical science. The Schedule establishes a classification system of regulated substances. The Withdrawal Guidelines provide recommendations on the withdrawal intervals of certain regulated substances.

(b) The necessity of this administrative regulation: The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be levied if the substance in question is administered in violation of 811 KAR 2:096 or 811 KAR 2:150. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide guidance to licensees on administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, “promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth.” The Withdrawal Guidelines provide guidance to licensees on administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Schedule provides notice to licensees and to allow the commission to levy the appropriate penalty if there is a violation of 811 KAR 2:096 or 811 KAR 2:150. The Withdrawal Guidelines are necessary to provide notice to licensees regarding the regulated administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(e) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will benefit the entities identified in question (3). The Schedule provides notice to licensees of the potential penalty for use of a certain substance. The Withdrawal Guidelines provide guidance to licensees on administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(f) 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:

(i) 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 should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The Schedule will provide a classification of regulated substances on an ongoing basis based on developments in medical science.

(ii) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not result in any additional costs to any of the entities identified in question (3).

(iii) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

(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 makes the following substantive changes to the existing administrative regulation: I. Withdrawal Guidelines: Present the withdrawal guidelines and thresholds in table format to make the documents easier to read and understand; Adopt threshold and withdrawal guideline for albuterol; Adopt threshold and amend withdrawal guideline for isoflupredone; Amend primary threshold and adopt secondary threshold for ketoprofen; Amend secondary threshold for phenylbutazone; Clarify surveillance requirement regarding ketoprofen. Provide additional information on withdrawal guidelines for methylprednisolone, triamcinolone and betamethasone; and Amend withdrawal guideline for flunixin. II. Classification Schedule: Amend descriptions of classes for clarity and accuracy; Add Aminorex as Class “A” drug; and Remove Levamisole/Tetramisole as Class “A” drug.

(b) The necessity of the amendment to this administrative regulation: The amendments are based on current scientific research and are based on recommendations of the Racing Medication and Testing Consortium (“RMTC”). The RMTC is a national organization dedicated to the development, promotion and coordination of policies, research and educational programs that seek to ensure the fairness and integrity of horse racing and the health and welfare of racehorses and its participants at the national level. The class descriptions included in the classification schedule are amended for clarity and accuracy. The thresholds and withdrawal guidelines are presented in table format to make the documents easier to read and understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horses participating in a race. The amendments are necessary to provide notice to licensees and to allow the commission to levy the appropriate penalty if there is a violation of 811 KAR 2:096 or 811 KAR 2:150. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide guidance to licensees on administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will ensure that the commission regulates the use of medication and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain medications and substances prior to a horse competing in a race in Kentucky.

(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 licensed owners, trainers, and veterinarians. It will also affect the commission as it regulates the use of medication and other substances on horses competing in Kentucky.

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

(i) 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 should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines.

(ii) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not result in any additional costs to any of the entities identified in question (3).

(iii) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

(a) Initially: There are no anticipated costs to the commission.

(b) On a continuing basis: There are no anticipated costs to the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement or enforce the amendments to this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding is necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have 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? 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 will be no costs associated with the implementation of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of the amendments to this administrative regulation.

Note: 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
Horse Racing Commission
(Amendment)

811 KAR 2:096. Medication; testing procedures; prohibited practices.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize[authorizes] the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Permitted NSAIDs" means the following permitted nonsteroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 811 KAR 2:093, or 811 KAR 2:150, was present in the sample.

(a) For the drugs, medications, or substances listed in Sections 2(3), 5, 6, or 8 of this administrative regulation or 811 KAR 2:093 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding.

(b) Positive finding[findings] also includes include:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; provided, however, that gamma amino butyric acid and cobalt shall not be present in concentrations greater than as provided in Section 2(4) of this administrative regulation; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse;

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 811 KAR 2:093 [The threshold for furosemide is set forth in Section 6 of this administrative regulation.]. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally if it
Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substances allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

1. Cimetidine (Tagamet®): 8-20 milligrams per kilogram (mg/kg);

2. Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

3. Ranitidine (Zantac®): eight (8) milligrams per kilogram (mg/kg); and

4. Sucralfate (Sucralfate®): 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(a) The commission veterinarian shall administer furosemide prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the following circumstances:

(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 milligrams (mg), nor be less than 150 milligrams (mg).

(c) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in blood will be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the blood specimen. Concentrations above 100 nanograms of furosemide per milliliter of blood shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse’s best interests to race with furosemide. Notice that a horse [eligible to receive furosemide] will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine sample does not show a detectable concentration of furosemide in the urine specimen. Plasma does not show a detectable concentration of furosemide in the post-race urine specimen.

(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse’s best interests to race with furosemide and the licensed trainer or a licensed veterinarian
Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse’s specimen does not exceed the following levels when tested post-race:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of [blood] serum or plasma; and
(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of [blood] serum or plasma;
(c) Ketoprofen - not to exceed two (2)[ten (10)] nanograms per milliliter of [blood] serum or plasma.
(2) NSAIDs, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 811 KAR 2:093, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.
(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:
(a) Boldenone:[free and conjugated]:
   1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter (≤15 ng/ml) in urine or free boldenone one (1) nanogram per milliliter (≤1 ng/ml) in [blood] serum or plasma; and
   2. In fillies and mares, free and conjugated boldenone one (1) nanogram per milliliter (≤1 ng/ml) in urine or free boldenone two (2) nanograms per milliliter (≤2 ng/ml) in [blood] serum or plasma; and
(b) Nandrolone:[free and conjugated]:
   1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter (≤1 ng/ml) in urine or free nandrolone five (5) picograms per milliliter (≤5 pg/ml) in [blood] serum or plasma;
   2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter (≤1 ng/ml) in urine or free nandrolone fifteen (15) picograms per milliliter (≤15 pg/ml) in [blood] serum or plasma; and
   3. In male horses other than geldings, forty-five (45) nanograms per milliliter (≤45 ng/ml) of metabolite, 5α-estrone-3β, 17α-diol in urine or a ratio in urine of 5α-estrone-3β, 17α-diol to 5α-estrone-3β, 17β-diol of 1:1.1
(c) Testosterone:[free and conjugated]:
   1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter (≤20 ng/ml) in urine or free testosterone twenty-five (25) picograms per milliliter (≤25 pg/ml) in [blood] serum or plasma; and
   2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter (≤55 ng/ml) in urine or free testosterone twenty-five (25) picograms per milliliter (≤25 pg/ml) in [blood] serum or plasma.
(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS:
(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.
(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:
   1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;
   2. A relevant specimen is taken from the horse;
   3. The sample is tested for AAS by the commission[a] laboratory from the approved veterinarian, shall record on the expense of the owner of the horse; and
   4. The commission has received a report from the commission laboratory of a negative finding regarding the sample.
(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.
(d) The horse shall not be entered into a race until at least sixty (60) days after the administration of the therapeutic AAS to the horse;
(e) Procedures for administration of therapeutic AAS.
   1. A therapeutic AAS shall be administered by a licensed veterinarian.
   2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS;
   3. Medical records for the horse shall document:
      a. Consideration of alternative treatment methods; and
      b. The necessity for administering the therapeutic AAS;
   4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:
      a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;
      b. The date and time of administration;
      c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and
      d. The diagnosis and justification for administration of the therapeutic AAS to the horse;
   5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.
   6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administration Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.
   (4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 2:100.
   (5)(a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.
   (b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.
   (6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this...
Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 811 KAR 2:170, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened;

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log; and

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample, as so requested shall be shipped as expeditiously as possible.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the trainer, secure, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the
commission. The Split Sample Chain of Custody Form shall be signed by both the owner’s representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the drug or medication, which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(2) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;
(b) The name of the address, and telephone number of the veterinarian prescribing or dispensing the product;
(c) The name of the horse for which the product is intended or prescribed;
(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse’s participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;
(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;
(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;
(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital nerve (heel nerve) is performed on a horse in his or her care and ensuring that this fact is indicated on its certificate of registration;
(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;
(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;
(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;
(i) Maintaining a medication record and medication status of horses in his or her care;
(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;
(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;
(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (i) and (4)(2);
(m) Ensuring proper bandages, equipment, and shoes;
(n) Ensuring the horse’s presence in the paddock at least twenty (20) minutes prior to post time, or at a time otherwise prescribed, before the race in which the horse is entered;
(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 811 KAR 2:045, Section 3(4); and
(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse in a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;
(b) The type and dosage of drug or medication administered or prescribed;
(c) The name of the trainer of the horse;
(d) The date and time of treatment; and
(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 2:100.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated, and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;
Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as determined by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- First incident - fourteen (14) days;
- Second incident within a 365-day period - thirty (30) days;
- Third incident within a 365-day period - 180 days; and
- Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 811 KAR 2:035; Section 29(2).

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

- The use of which may endanger the health and welfare of the horse; or
- The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

- Erythropoietin;
- Darbepoietin;
- Oxyglobin®;
- Hemopure®; or
- Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

- Endanger the health or welfare of a horse; or
- Endanger the safety of a rider.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the following conditions are met:

- A treated horse shall not race for a minimum of ten (10) days following treatment;
- A veterinarian licensed to practice by the commission shall administer the treatment;
- The commission veterinarian shall be notified prior to the delivery of the machine to the association grounds; and
- A report shall be submitted by the commission veterinarian administering the treatment to the commission veterinarian on the Kentucky Horse Racing Commission Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the [blood] or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A [blood] serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven (37.0) millimoles per liter in a horse; except no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21(4) of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the [blood] serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race testing shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from the horse to determine the TCO2 concentration in the [blood] serum or plasma of the horse. If the commission laboratory determines that the TCO2 level exceeds thirty-seven...
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SPLIT SAMPLING TESTING (37.0)(374) millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO₂ may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO₂ testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association shall be removed by a facility designated by the commission, through its designee, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and
2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO₂ level is physiologically normal.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC 2, 8/97;
(b) "Split Sample Chain of Custody Form", KHRC 18-01, 4/12;
(c) "Kentucky Horse Racing Commission/Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy", KHRC 18-02, 8/15[435]; and
(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. This material is also available on the commission’s Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the administration of drugs, medications and substances to quarter horses, arabian horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage, and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer’s responsibilities, making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian’s List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that die or are euthanized on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2), 230.225(5)(b), and 230.240(2). KRS 230.215(2) states: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing and the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth... KRS 230.225(5)(b) states:...[T]he racing commission shall be responsible for [d]eveloping programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues...KRS 230.240(2) states: The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes...Without this administrative regulation, the commission would be unable to effectively fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon...
shall be conducted in Kentucky and charges it to, ”promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth.” KRS 225(5)(b) establishes that the commission is responsible for developing programs and procedures to aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues. KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to ”maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth.” See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215, 230.225, and 230.240. It also provides notice to owners and practitioners regarding what medications and practices are, or are not, permitted.

(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: In addition to a number of grammatical, technical, and formatting changes, the amendment: Provides that gamma amino butyric acid shall not be present in a concentration greater than 110 micrograms per milliliter in serum or plasma; Provides that ketoprofen shall not be present in a post-race sample in a concentration of greater than 2 nanograms per milliliter in serum or plasma; Provides that a finding of phenylbutazone below a concentration of 0.3 microgram per milliliter in serum or plasma shall not constitute a violation; Provides that finding of free and conjugated testosterone above 55 nanograms per milliliter in urine or free testosterone above 25 picograms per milliliter in serum or plasma does not constitute a violation in fillies or mares in foal; and Provides a restricted administration time of 60 days for horses treated with therapeutic anabolic, metabolic, and integrity enhancing drugs or stimulants.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of therapeutic medications, illicit drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry-wide policy changes and is necessary to ensure that the commission’s regulatory framework accounts for recent developments in medical science.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments specifically address the administration of medications to horses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical industry. It also ensures that Kentucky’s regulatory framework is consistent with industry wide trends in this area, which results in greater uniformity of rules among various racing jurisdictions.

(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 many of the commission’s roughly 18,000 licensees, either directly or indirectly, including owners, trainers, and their employees; veterinarians; jockeys; racing associations and their employees; and the commission itself. It will directly affect owners, trainers and veterinarians, who will have to comply with the amended regulation. It will affect the commission which is charged with administering and enforcing the rules. It will affect the commission’s official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that quarter horse, appaloosa and arabian racing in Kentucky is “free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices.” It will affect jockeys, exercise riders, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 owners and trainers and practicing veterinarians will be required to: Comply with the adjusted threshold levels for certain drugs. The commission will be responsible for enforcing the amendments to the medication rules. The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment. Providing notice to the trainers (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 associated with complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy. All licensees, including owners, trainers and racing associations, will benefit from the commission’s official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect jockeys, exercise riders, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

(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. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The drug testing described in the regulation is paid for by the racing associations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

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

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
Horseracing Commission
(AMENDMENT)

811 KAR 2:100. Disciplinary measures and penalties.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) “Associated person” means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) “Class A drug” means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) “Class B drug” means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) “Class C drug” means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) “Class D drug” means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) “Companion” means a person who cohabits with or shares living accommodations with an inactive person.

(7) “Inactive person” means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 2 or KRS Chapter 230.

(8) “NSAID” means a non-steroidal anti-inflammatory drug.

(9) “Primary threshold” means the thresholds for phenylbutazone and flunixin provided in 811 KAR 2:096, Section 8(1)(a), (b), and (c), respectively.

(10) “Schedule” means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 2:093.

(11) “Secondary threshold” means the thresholds for phenylbutazone and flunixin provided in 811 KAR 2:096, Section 8(3)(b) and (c), respectively.

(12) “Withdrawal guidelines” means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa, and Arabians as provided in 811 KAR 2:093.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and arabian racing or 811 KAR Chapter 2 shall be adjudicated in accordance with 811 KAR 2:105, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6) A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 811 KAR 2:096 may be requested to pass a commission-approved examination as determined by the stewards pursuant to 811 KAR 2:065, Section 10, or be placed on the veterinarian’s list pursuant to 811 KAR 2:096, Section 18.

(8)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for Post-Race Testing of Claimed Horse form and includes the form in the claim blank envelope which is deposited in the association’s claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TC02 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TC02) level exceeding thirty-seven (37.0) to thirty-two (32.0) millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TC02 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant: 1. Shall exercise due care in maintaining and boarding a claimed horse; and 2. Shall not materially alter a claimed horse.

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in...
which the horse is entered. If the stewards require the trainer’s horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 2:096 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or 811 KAR Chapter 2 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards’ list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer’s notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender’s prior record containing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drugs

<table>
<thead>
<tr>
<th>(a) TRAINER</th>
<th>(b) OWNER</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>Second lifetime offense in any racing jurisdiction</td>
</tr>
<tr>
<td>One (1) to three (3) year suspension;</td>
<td>Three (3) to five (5) year suspension;</td>
</tr>
<tr>
<td>AND</td>
<td>AND</td>
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<tr>
<td>$10,000 to $25,000 fine.</td>
<td>$25,000 to $50,000 fine.</td>
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<table>
<thead>
<tr>
<th>(b) OWNER</th>
<th>(c) (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>Second offense within a 365-day period in any racing jurisdiction</td>
</tr>
<tr>
<td>Disqualification and loss of purse;</td>
<td>Thirty (30) to sixty (60) day suspension;</td>
</tr>
<tr>
<td>AND</td>
<td>AND</td>
</tr>
<tr>
<td>$500 to $1,000 fine.</td>
<td>$1,000 to $2,500 fine.</td>
</tr>
</tbody>
</table>

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:
1. Class B drugs;
2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and
3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b)(a) TRAINER

| First offense | Second offense within a 365-day period in any racing jurisdiction | Third offense within a 365-day period in any racing jurisdiction |
| Disqualification and loss of purse; | Sixty (60) to 180 day suspension; | 180 to 365 day suspension; |
| AND | AND | AND |
| $1,000 to $2,500 fine. | $2,500 to $5,000 fine. | $5,000 to $10,000 fine. |

(b)(b) OWNER

| First offense | Second offense within a 365-day period in any racing jurisdiction | Third offense within a 365-day period in any racing jurisdiction |
| Disqualification and loss of purse; | Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards; | Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards; |
| AND | AND | AND |
| Horse shall be placed on the stewards’ list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. | Horse shall be placed on the stewards’ list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. | Horse shall be placed on the stewards’ list for four (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards. |

AND

$50,000 fine;

$10,000 to $25,000 fine;

$500 to $1,000 fine.
(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter; and
2. Flunixin in a concentration greater than 100 nanograms per milliliter; and
3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter.

(b) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to ten (10) day suspension; AND $500 to $1,500 fine.</td>
<td>Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.</td>
<td>Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.</td>
</tr>
</tbody>
</table>

(c) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards’ list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the stewards’ list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
</tr>
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</table>

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenoxybutazone, flunixin, and ketoprofen.

(a) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense</th>
<th>Third offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concentrations of both permitted NSAIDs above the primary threshold.</td>
<td>Concentrations of one (1) permitted NSAID above the primary threshold and above the secondary threshold.</td>
<td>Concentrations of both permitted NSAIDs below the primary threshold and above the secondary threshold.</td>
</tr>
<tr>
<td>First offense: Zero to sixty (60) day suspension; AND</td>
<td>Second offense: Zero to fifteen (15) day suspension; AND</td>
<td>Third offense: Zero to five (5) day suspension; AND</td>
</tr>
</tbody>
</table>
Section 6. Shock Wave Machine and Blood Gas Machine

Penalties. Penalties for violations of 811 KAR 2:096, Section 20(5), (9), or (10), shall be as follows:

(1) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
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</thead>
<tbody>
<tr>
<td>Thirty (30) to sixty (60) days suspension; AND</td>
<td>Sixty (60) to 180 day suspension; AND</td>
<td>180 to 365 day suspension; AND</td>
</tr>
<tr>
<td>$1,000 to $5,000 fine.</td>
<td>$5,000 to $10,000 fine.</td>
<td>$10,000 to $20,000 fine.</td>
</tr>
</tbody>
</table>

(2) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second lifetime offense in any racing jurisdiction</th>
<th>Third lifetime offense in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification and loss of purse; AND</td>
<td>Disqualification and loss of purse; AND</td>
<td>Disqualification and loss of purse; AND</td>
</tr>
<tr>
<td>If same horse as first offense, horse shall be placed on the stewards’ list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>If same horse as first and second offenses, horse shall be placed on the stewards’ list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
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Section 5. TCO2 Penalties. Penalties for violations of 811 KAR 2:096, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
<th>Subsequent offenses within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero to ninety (90) day suspension; AND</td>
<td>$500 to $1,000 fine.</td>
<td>Ninety (90) to 180 day suspension; AND</td>
<td>$1,000 to $1,500 fine.</td>
</tr>
<tr>
<td>$1,500 to $3,000 fine.</td>
<td>Ninety (90) to 180 day suspension; AND</td>
<td>$2,500 to $5,000 fine.</td>
<td>Ninety (90) to 180 day suspension; AND</td>
</tr>
<tr>
<td>Subsequent offenses within a 365-day period in any racing jurisdiction</td>
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<td></td>
<td></td>
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</table>

(2) OWNER

<table>
<thead>
<tr>
<th>First offense</th>
<th>Second offense within a 365-day period in any racing jurisdiction</th>
<th>Third offense within a 365-day period in any racing jurisdiction</th>
<th>Subsequent offenses within a 365-day period in any racing jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>If same horse as first offense, horse shall be placed on the stewards’ list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
<td>If same horse as first and second offenses, horse shall be placed on the stewards’ list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.</td>
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Section 7. Out-of-Competition Testing. The penalties established in 811 KAR 2:150, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:
(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;
(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or
(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:
(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;
(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;
(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or
(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:
(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;
(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;
(c) Not use the services, directly or indirectly, of current employees of the inactive person; and
(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 2:096, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 811 KAR 2:096, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;
(2) Suspense or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;
(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or
(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;
(2) Suspense or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case;
(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or
(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Request for Post-Race Testing of Claimed Horse", August 2014;
(b) "Claim Blank envelope", 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.
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 comment shall be accepted through close of business November 2, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of: What is the purpose and intended effect of this administrative regulation? This administrative regulation establishes penalties for violations of 811 KAR 2:096 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.240(2) and KRS 230.215(2) states: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky, including appaloosa and arabian racing and pari-mutuel wagering thereon and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth...KRS 230.240(2) states: The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 811 KAR 2:096, this regulation allows the commission to "maintain horse racing at race horse meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and 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: The amendments relate directly to proposed changes to the medication regulation: 811 KAR 2:096; Establishes penalties for findings of cobalt and gamma amino butyric acid in concentrations above the proposed thresholds; and Amends the threshold for ketoprofen to be consistent with the medication regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that the penalty regulation is consistent with the medication regulation and to ensure that the penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(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 participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation.

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

(c) How the amendment conforms to the content of the existing administrative regulations: This regulation complies with the intent of the existing administrative regulations: to ensure that the penalties are appropriate and clear. The amendments help provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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


(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:200. Tuberculosis (TB) testing for residents in long-term care settings(facilities).

RELATES TO: KRS 215.520-215.600, 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 215.590 requires a health service or health facility licensed pursuant to KRS Chapter 216B or KRS Chapter 333 to report knowledge of a person who has active tuberculosis to the local health department. This administrative regulation establishes requirements for tuberculosis (TB) testing of residents in the following long-term care settings: nursing facilities, intermediate care facilities, nursing homes, Alzheimers nursing homes, personal care homes, and intermediate care facilities for individuals with an intellectual disability (ICF/IID). These procedures are necessary to minimize the transmission of infectious tuberculosis among the staff and residents in long-term care settings.

Section 1. Definitions. (1) "Air changes per hour" or "ACH" means the air change rate expressed as the number of air exchange units per hour.

(2) "Airborne Infection Isolation (All) room" means a room, formerly called a negative pressure isolation room, which is designed to maintain All and is a single-occupancy patient-care room used to isolate persons with suspected or confirmed infectious TB disease.

(3) "BAMT conversion" means a change in the BAMT test result, on serial testing, from negative to positive over a two (2) year period.

(4) "Blood Assay for Mycobacterium tuberculosis" or "BAMT" means a diagnostic blood test that:
(a) Assesses for the presence of infection with M. tuberculosis; and
(b) Reports results as positive, negative, indeterminate, or borderline. This test includes interferon-gamma (IFN-γ) release assays (IGRA).

(5) "Boosting" or the "booster phenomenon" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TSTs) may restore the sensitivity.

(6) "Directly observed preventive therapy" or "DOPT" means the DOT for treatment of LTBI.

(7) "Directly observed therapy" or "DOT" means an adherence-enhancing strategy:
(a) In which a health care worker or other trained person watches a patient swallow each dose of medication; and
(b) That is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI).

(8) "Extrapulmonary tuberculosis" means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes), and may include the presence of pulmonary TB or other infectious TB diseases.

(9) "Health care workers" or "HCWs" means all paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air, and shall include:
(a) Physicians;
(b) Physician assistants;
(c) Nurses;
(d) Medical assistants;
(e) Nursing assistants or nurse aides;
(f) Therapists;
(g) Technicians;
(h) Emergency medical service personnel;
(i) Dental personnel;
(j) Pharmacists;
(k) Laboratory personnel;
(l) Autopsy personnel;
(m) Students and trainees;
(n) Contractual and community-based physicians and other healthcare professionals and staff not employed by the health care facility; and

(10) "Induration" means a firm area in the skin that develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and that is measured in accordance with Section 2(2) of this administrative regulation.

(11) "Infectious tuberculosis" means pulmonary, laryngeal, endobronchial, or tracheal TB disease or a draining TB skin lesion that has the potential to cause transmission of tuberculosis to other persons.

(12) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease having been manifested.

(13) "Long-term care setting" means a nursing facility.
intermediate care facility, nursing home, Alzheimer’s nursing home, personal care home, or intermediate care facility for individuals with an intellectual disability.

(14) “Multidrug-resistant tuberculosis” or “MDR TB” means TB disease caused by M. tuberculosis organisms that are resistant to at least isoniazid (INH) and rifampin.

(15) “Nucleic Acid Amplification” or “NAA” means a laboratory method used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence usually for detecting and identifying a microorganism.

(16) “Polymerase chain reaction” or “PCR” means a system for in vitro amplification of DNA or RNA that can be used for diagnosis of infections.

(17) “Staggered tuberculosis testing” means the testing of a resident in or before the same month as the anniversary date of the resident’s admission, or testing in or before the birth month of the resident so that all residents do not have tuberculosis testing in the same month.

(18) “TST conversion” means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 2(4) of this administrative regulation.

(19) “Tuberculin skin test” or “TST” means a diagnostic aid for finding M. tuberculosis infection that:

(a) Is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD); and

(b) Has its results read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(20) “Tuberculosis (TB) disease” means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 2(3) of this administrative regulation.

(21) “Tuberculosis risk assessment” means an initial and ongoing evaluation of the risk for LTBI or active TB disease in a particular resident and is performed in accordance with the provisions established in Sections 3, 7, 8, and 11 of this administrative regulation.

(22) “Two-step TST” or “two-step testing” means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including health care workers and residents of long-term care settings to reduce the likelihood of mistaking a boosted reaction for a new infection.

Section 2. Tuberculosis Testing Requirements for TSTs. (1) Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(2)(a) A TST shall be performed by:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant;

4. A registered nurse; or

5. A pharmacist.

(b) A licensed practical nurse under the supervision of a registered nurse may perform a TST.

(3) Induration Measurements:

(a) The diameter of the firm area shall be measured transversely (i.e., perpendicularly) to the long axis of the forearm to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(b) The diameter of the firm area shall not be measured along the long axis of the forearm.

(c) A reaction of ten (10) millimeters or more of induration if the TST result is interpreted as positive, shall be considered highly indicative of tuberculosis infection in a health care setting.

(d) A reaction of five (5) millimeters to nine (9) millimeters of induration may be significant in certain individuals with risk factors described in Section 3(3) of this administrative regulation for rapid progression to active tuberculosis disease if infected.

(4) Tuberculosis (TB) disease:

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present but other indications of disease activity are present, including radiographic abnormalities) illness.

1. Tuberculosis that is found in the lungs is called pulmonary TB and may be infectious.

2. Extrapulmonary disease (occurring at a body site outside the lungs) may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition is termed “inactive TB” and shall be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture producing TB organisms from respiratory secretions or specific chest radiographic findings.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 3. TB Risk Assessment and Tuberculin Skin Tests or BAMTs for Residents. (1) Risk Assessment:

(a) To perform a risk assessment, a questionnaire shall be used and the following factors shall be assessed:

1. The clinical symptoms of active TB disease;

2. Events and behaviors that increase the risk for exposure to M. tuberculosis and the risk of acquiring LTBI; and

3. Medical risk factors that increase the risk for a resident with LTBI to develop active TB disease.

(b) A TB Risk Assessment questionnaire may be obtained from the Kentucky Department for Public Health (published online at: http://chfs.ky.gov/dph/ep/tb.htm) or from a national medical or public health organization, including the American Academy of Pediatrics or the Centers for Disease Control and Prevention.

(c) TB Risk Assessment questions shall be on a facility-approved form or incorporated into the long-term care setting’s medical forms or into forms or other features of the long-term care setting’s electronic medical record systems.

(2) Exclusion of Residents from Tuberculin Skin Tests or BAMTs on Admission. A TST or BAMT shall not be required on admission if the resident, resident’s guardian, resident’s health care surrogate, or resident’s responsible party provided medical documentation for one (1) of the following as part of a TB Risk Assessment:

(a) A prior TST of ten (10) or more millimeters of induration if the TST result was interpreted as positive;

(b) A prior TST of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in subsection (3) of this section for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion;

(f) The resident is currently receiving or has completed treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention;

(g) The resident has completed a course of multiple-drug therapy for active TB disease recommended by the Centers for Disease Control and Prevention; or

(h) The resident has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at another medical facility, long-term care setting, or other health care setting.

(3) A medical reason for a resident’s TST result of five (5) millimeters to nine (9) millimeters of induration to be interpreted as positive may include:

(a) HIV-infection;
b) Immunosuppression from disease or medications;
  c) Fibrotic changes on a chest radiograph consistent with previous TB disease; or
  d) Recent contact with a person who has active TB disease.

4. TB Risk Assessments and Tuberculin Skin Tests or BAMTs on Admission.
   a) A baseline TB Risk Assessment and a TST or BAMT, if not excluded pursuant to subsection (2) of this section, shall be initiated on each new resident before or during the first week of admission. The results shall be documented in the resident’s medical record or electronic medical record within the first two (2) weeks of admission.
   b) A TB Risk Assessment required by paragraph (a) of this subsection and other sections of this administrative regulation shall be performed by:
      1. A physician;
      2. An advanced practice registered nurse;
      3. A physician assistant;
      4. A registered nurse; or
      5. A pharmacist.
   c) A licensed practical nurse under the supervision of a registered nurse may perform the TB Risk Assessment.
   d) An initial or first-step TST result of ten (10) millimeters or more of induration may be interpreted as positive for a new resident.
   e) An initial or first-step TST result on admission of five (5) to nine (9) millimeters of induration may be interpreted as positive for a resident who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.
   f) A two-step baseline TST shall be required on admission for each resident aged fourteen (14) years and older whose initial or first-step TST on admission is interpreted as negative.
   g) The second-step test shall be initiated seven (7) to twenty-one (21) days after the first test.
      1. A TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive on the second step TST for a resident who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.
      2. If a resident aged fourteen (14) years and older does not have a medical reason as identified in subsection (3) of this section and the resident’s initial or first-step TST performed in accordance with subsection (4)(a) of this section shows less than ten (10) millimeters of induration and a second step TST shows more than ten (10) millimeters of induration, the TST shall be interpreted as positive.
      3. The initial TST shall count as the second-step TST if the resident aged fourteen (14) years and older provided medical documentation that he or she has had a one-step TST interpreted as negative within one (1) year prior to initial testing upon admission to the long-term care setting.
   h) A BAMT may be used in place of, but not in addition to, a TST and:
      a) If a BAMT is performed before or during the first week of admission and the result is positive or negative, only one (1) BAMT test result shall be required; and
      b) A second BAMT shall be performed if the BAMT result is borderline, indeterminate, or invalid.

Section 4. Admission of Patients Under Treatment for Pulmonary Tuberculosis Disease or Other Infectious Tuberculosis Diseases.
1. A long-term care setting as described in Section 1(13) of this administrative regulation shall not admit a person under medical treatment for suspected or confirmed extrapulmonary tuberculosis disease caused by non-MDR TB or MDR TB, unless the person is declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in consultation with the local and state health departments.
   a) A long-term care setting as described in Section 1(13) of this administrative regulation shall not admit a person under medical treatment for suspected or confirmed pulmonary tuberculosis disease or other suspected or confirmed infectious tuberculosis diseases caused by either non-MDR TB or MDR-TB unless the person is declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in consultation with the local and state health departments.
   b) Documentation of noninfectious status shall include clinical, radiographic, and laboratory evidence that concurrent pulmonary TB disease or other infectious TB disease has been excluded.

Section 5. Medical Record or Electronic Medical Record Documentation for Residents. (1) The TB Risk Assessment shall be documented in the resident’s medical record or electronic medical record by recording the date of the assessment and the results.
   a) The TST result of each resident shall be documented in the resident’s medical record or electronic medical record by recording the date of measurement, millimeters of induration, and interpretation of the results of all TSTs.
   b) The medical record shall be labeled inside or the electronic medical record shall be labeled with the notation “TST Positive” for each resident with a reaction of:
      a) Ten (10) millimeters or more of induration if the TST result was interpreted as positive; or
      b) Five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for the TST result to be interpreted as positive.
   c) If performed, the BAMT result of each resident shall be documented in the resident’s medical record or electronic medical record by recording the date and result as positive, negative, borderline, or indeterminate.
   d) If a resident has a positive BAMT, his or her medical record shall be labeled inside or electronic medical record shall be labeled with the notation “BAMT Positive.”

Section 6. Medical Evaluations, Chest X-rays, and Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of admission or annual testing, a resident shall have a medical evaluation, including an HIV test unless the resident, resident’s guardian, resident’s health care surrogate, or resident’s responsible party opts out of HIV testing, if the resident is found to have a:
   a) TST result of ten (10) millimeters or more of induration if the TST result is interpreted as positive; or
   b) TST result of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for the TST result to be interpreted as positive;
   c) Positive BAMT; (d) TST conversion; or (e) BAMT conversion.
   (2) A chest x-ray shall be performed as part of the medical evaluation required by subsection (1) of this section unless a chest x-ray performed within the previous two (2) months showed no evidence of tuberculosis disease.
   a) A resident with no clinical evidence of active TB disease upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant, and a negative chest x-ray, shall be offered treatment for LTBI unless there is a medical contraindication.
   b) A resident who refuses treatment for LTBI, or a resident whose guardian, health care surrogate, or responsible party refuses on behalf of the resident treatment for LTBI, or a resident who has a medical contraindication shall be monitored according to the requirements in Section 7 of this administrative regulation.
   c) A resident with symptoms or an abnormal chest x-ray consistent with TB disease shall be:
      a) Isolated in an AIIR room or transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AIIR room; and
      b) Evaluated for active tuberculosis disease as established in this paragraph.
      1. Three (3) sputum specimens collected eight (8) to twenty-four (24) hours apart with at least one (1) being an early morning
specimen shall be submitted to a hospital laboratory or a state or national reference laboratory for tuberculosis culture, AFB smear, and NAA or PCR tests.

2. Multi-drug antituberculosis treatment shall be administered by DOT for suspected or active tuberculosis disease.

(a) A resident with a positive TST or a positive BAMT on admission who stays eleven (11) months or longer in the long-term care setting shall have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment.

(b) The resident shall not be required to submit to an annual TST or BAMT.

(c) If pulmonary symptoms, including cough, sputum production, and chest pain, develop and persist for three (3) weeks or longer:

1. The resident shall have a medical evaluation;

2. The TST or BAMT shall be repeated; and

3. A chest x-ray shall be taken.

Section 7. Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, and chest pain, if the resident has:

(a) A TST result with ten (10) or more millimeters of induration;

(b) A TST result of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion; or

(e) A BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, and chest pain develop and persist for three (3) weeks or longer:

(a) The resident shall have a medical evaluation; and

(b) A chest x-ray shall be taken.

(3) A resident with symptoms or an abnormal chest x-ray consistent with TB disease shall be:

(a) Isolated in an AII room; or

(b) Transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AII room.

(4) If a long-term care setting does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements for residents, the administrator shall arrange for training or professional assistance through the local and state health departments.

Section 8. Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents for Eleven (11) Months or Longer. (1) A long-term care setting shall use staggered tuberculosis testing to assure that all residents are not tested in the same month. Staggered testing shall be performed monthly, quarterly, or semiannually.

(2) An annual TB Risk Assessment and a TST or BAMT shall be required in or before the same month as the anniversary date of the resident's last TB Risk Assessment and TST or BAMT.

(a) If pulmonary symptoms, including cough, sputum production, and chest pain, develop and persist for three (3) weeks or longer:

1. The resident shall have a medical evaluation;

2. The TST or BAMT shall be repeated; and

3. A chest x-ray shall be taken.

(b) A resident with signs or symptoms or an abnormal chest x-ray, consistent with TB disease, shall be:

1. Isolated in an AII room; or

2. Transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AII room; and

3. Evaluated for active tuberculosis disease as provided in this subparagraph.

Section 9. Responsibility for Screening and Monitoring Requirements: Residents. (1) A long-term care setting's administrator or administrator's designee shall be responsible for ensuring that all TB Risk Assessments, TSTs, BAMTs, chest x-rays, and sputum specimen submissions for residents comply with Section 2 through Section 8 of this administrative regulation.

(2) If a long-term care setting does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements for residents, the administrator shall arrange for training or professional assistance from the local health department or from a licensed medical provider.

Section 10. Reporting to Local Health Departments. (1) A long-term care setting's administrator or the administrator's designee shall report a resident identified with one (1) of the following to the local health department having jurisdiction within one (1) business day upon becoming known:

(a) A TST conversion or BAMT conversion on serial testing or identified in a contact investigation;

(b) A chest x-ray which is suspicious for TB disease; or

(c) A sputum smear positive for acid-fast bacilli.

(2) The initiation of multi-drug antituberculosis treatment for a resident shall be:

(e) Sputum cultures positive for Mycobacterium tuberculosis DNA or RNA, such as Mycobacterium tuberculosis positive NAA tests or PCR tests; or

(f) The initiation of multi-drug antituberculosis treatment for a resident identified with one
Section 1. Definitions. (1) "Induration" means a firm area in the skin which develops as a reaction to injection tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(2) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(3) Two (2) step skin testing consists of administering two (2) tuberculin skin tests, one (1) at 0.1 milliliters and the other (1) at 0.5 milliliters, and reading the tests at forty-eight (48) to seventy-two (72) hours after injection. The result of the test is the reading of the larger reaction.

Section 2. Admission of Patients under Treatment for Pulmonary Tuberculosis Disease. No licensee shall admit a person under medical treatment for pulmonary tuberculosis disease unless there is written evidence of the required treatments in the resident's medical record for his or her last TB Risk Assessment.

(1) Admission of Patients under Treatment for LTBI. The requirements stated in this administrative regulation shall supersede the requirement stated in this administrative regulation within 902 KAR Chapter 20 that nursing homes report cases of tuberculosis. The purpose of this administrative regulation is to establish licensure requirements concerning uniform procedures for the identification and control of tuberculosis in nursing facilities, intermediate care facilities, nursing homes, and personal care homes. These procedures are necessary to minimize the transmission of tuberculosis infection among the staff and residents of such facilities.

Section 12. Compliance Date. All health care settings or health facilities subject to the tuberculosis testing requirements of this administrative regulation shall demonstrate compliance no later than ninety (90) days after the effective date of this administrative regulation.

Section 13. Supersede. If any requirement stated in another administrative regulation within 902 KAR Chapter 20 contradicts a requirement stated in this administrative regulation, the requirement stated in this administrative regulation shall supersede the requirement stated elsewhere within 902 KAR Chapter 20.
Section 3. Tuberculin Skin Testing of Residents. (1) For residents entering a facility, no skin testing is required if one of the following can be documented:
   (a) A previous documented skin test has shown ten (10) or more millimeters of induration; or
   (b) The resident is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis; or
   (c) The resident can document that he/she has had a tuberculin skin test within three (3) months prior to admission.

(2) For all other residents, however, skin testing is required upon admission to the facility. For such residents whose initial skin test shows less than ten (10) millimeters of induration, two (2) step skin testing is required, unless they can document that they have had a tuberculin skin test within one (1) year prior to their initial testing upon admission to the facility. The skin test status of all residents must be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record. The front cover of the medical record shall be labeled in a conspicuous manner with the notation “PPD+” for all residents with a reaction of ten (10) or more millimeters of induration.

Section 4. X-raying of Residents. All residents found on admission testing to have a skin test of ten (10) or more millimeters of induration shall receive a chest x-ray, unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease or the resident can document the previous completion of a course of prophylactic treatment with isoniazid.

Section 5. Monitoring of Residents with a Skin Test of Ten (10) or More Millimeters of Induration. Residents with a skin test of ten (10) or more millimeters of induration shall be monitored for development of pulmonary symptoms such as cough, sputum production or chest pain. If such symptoms develop and persist for three (3) weeks or longer, a chest x-ray shall be taken. A subsequent skin test shall be repeated, three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky, for tuberculosis culture and smear.

Section 6. Monitoring of Residents with a Skin Test of Less than Ten (10). Millimeters of Induration. Annual skin testing is required. In addition, if pulmonary symptoms develop and persist for three (3) weeks or longer, a chest x-ray shall be taken. A subsequent skin test shall be repeated, three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear, and a chest x-ray shall be taken.

Section 7. Tuberculin Skin Testing of Staff. The skin test status of all staff members shall be documented in the employee’s personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee’s personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test or who have a skin test of less than ten (10) millimeters of induration must be skin tested annually on or before the anniversary of their last skin test.

Section 8. X-raying and Monitoring of Staff with a Skin Test of Ten (10) or More Millimeters of Induration. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray, unless they can document that they have had a chest x-ray done within the previous six (6) months. If such individual is suspicious for tuberculosis; sputum smears positive for acid-fast bacilli; sputum cultures positive for Mycobacterium tuberculosis; residents or staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration, and all residents and staff who have a skin test of ten (10) millimeters or more induration at the time of admission or employment, respectively.

Section 9. Responsibility for Screening and Monitoring Requirements. The administrator of each long-term care facility is responsible for ensuring that all staff, residents, and sputum sample submissions are done in accordance with Sections 1 through 8 of this administrative regulation. In those facilities not employing professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from either the local health department or private medical practitioners. In those facilities not employing professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from either the local health department or private medical practitioners.

Section 10. Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the administrator of the long-term care facility immediately upon becoming known: chest x-rays which are suspicious for tuberculosis; sputum smears positive for acid-fast bacilli; sputum cultures positive for Mycobacterium tuberculosis; residents or staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration, and all residents and staff who have a skin test of ten (10) millimeters or more induration at the time of admission or employment, respectively.

Section 11. Prophylaxis of Persons with Recent Infection but No Disease. Any resident or staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration, may be considered for treatment if they are positive for Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If a patient is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion.

Section 12. Any staff or resident who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements except in accordance with Section 5 of this administrative regulation.

MARYELLEN B. MYNEAR, Inspector General
APPROVED BY AGENCY: September 9, 2015
FILED WITH OLC: September 11, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 23, 2015, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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 on this proposed administrative regulation until close of business, November 2, 2015. Send written notification of intent to attend the hearing to the Department for Health Services, Division of Laboratory Services, Frankfort, Kentucky.
public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Mynear, Robert L. Brawley, MD, MPH, FSHEA, Stephanie Brammer-Barnes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for tuberculosis (TB) testing of residents in the following long-term care settings: nursing facilities, intermediate care facilities, nursing homes, Alzheimer’s nursing homes, personal care homes, and Intermediate Care Facilities for Individuals with an Intellectual Disability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures to minimize the transmission of infectious TB disease among the staff and residents in long-term care settings.

(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 and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures to minimize the transmission of infectious TB disease among the staff and residents in long-term care settings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates existing TB screening requirements to help ensure compliance with the Centers for Disease Control and Prevention’s (CDC) guidelines for preventing the transmission of TB in health care facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update existing requirements to ensure compliance with the CDC’s guidelines for preventing the transmission of infectious TB disease in health care facilities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating standards intended to prevent the transmission of TB in long-term care settings.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by updating existing standards intended to prevent the transmission of infectious TB disease in long-term care settings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts residents of the following long-term care settings (the number of currently licensed facilities appears in parenthesis next to the facility type): nursing facilities (281), intermediate care facilities (9), nursing homes (6), Alzheimer’s nursing homes (1), personal care homes (157), and Intermediate Care Facilities for Individuals with an Intellectual Disability (14).

(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 identified in question (3) will be required to comply with TB testing requirements established in this administrative regulation that are consistent with the Centers for Disease Control and Prevention’s guidelines.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Long-term care settings should be in compliance with the CDC’s guidelines for preventing the transmission of TB in health care facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Staff and residents in long-term care settings will benefit from revised standards intended to prevent the transmission of TB.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts residents of the following long-term care settings (the number of currently licensed facilities appears in parenthesis next to the facility type): nursing facilities (281), intermediate care facilities (9), nursing homes (6), Alzheimer’s nursing homes (1), personal care homes (157), and Intermediate Care Facilities for Individuals with an Intellectual Disability (14).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 215.520-215.600, 216B.010-216B.131

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not 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? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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
Real Estate Appraisers Board
(New Administrative Regulation)

201 KAR 30:380. Individual appraiser license renewal and fee.

RELATES TO: KRS 324A.020, 324A.035(3)(c), 324A.045, 324A.065
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(c), 324A.045, 324A.065

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for licensed and certified appraisers. This administrative regulation establishes the procedures and fees for a licensed and certified appraiser to renew a license.

Section 1. Except as provided in Section 2 of this administrative regulation, a licensed or certified real property appraiser seeking to renew his or her license shall:
(1) Utilize the online License Renewal System offered by the board at www.kreab.ky.gov; and
(2) Pay a renewal fee in the amount of $212 for associate appraiser renewal and $252 for certified or licensed residential renewal.

Section 2. If a licensed or certified appraiser is unable to utilize the online procedure, he or she shall:
(1) Submit a written request to obtain a paper copy of the License Renewal Form to the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street #301, Richmond, Kentucky 40475;
(2) Complete and submit the application to the board; and
(3) Submit a check or money order made payable to the Kentucky Real Estate Appraisers Board in the amount of $212 for associate appraiser renewal and $252 for certified or licensed residential renewal.

Section 3. The board shall notify a licensee that his or her license is due to expire in accordance with the renewal dates established in KRS 324A.045(2).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Associate - Renewal Notice", 2015;
(b) "Certified - Renewal Notice", 2015; and
(c) "License Residential - Renewal Notice", 2015.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street #301, Richmond, Kentucky 40475, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chairperson
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 10, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 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 close of business on November 2, 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 establishes license renewal procedures and clarifies fees for licensed and certified appraisers.
(b) The necessity of this administrative regulation: This regulation is necessary to establish the license renewal procedures and clarify fees for licensed and certified appraisers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require regulations establishing the license renewal procedures.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by clarifying and establishing the licensure or certification renewal procedures and requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,800 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 have established procedures and requirements for renewal as required by statute.
(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 new regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees or certificate holders will have procedures and requirements for renewal clarified in the regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by 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. Fees set forth in KRS 324A.065 and 201 KAR 30:060.
(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. Fees set forth in KRS 324A.065 and 201 KAR 30:060.

(9) TIERING: Is tiering applied? The renewal licenses are divided into 3 categories: Associate, Certified and Licensed Residential and each licensee is required to pay the same fee within each classification. All Associates are required to pay $212, and all Certified/Licensed Residential are required to pay $252 for renewal.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.020, 324A.035(3)(c), 324A.045, 324A.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. None

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

   (c) How much will it cost to administer this program for the first year? None

   (d) How much will it cost to administer this program for subsequent years? None

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

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

   Other Explanation:

**GENERAL GOVERNMENT CABINET**

**Board of Alcohol and Drug Counselors**

(201 KAR 35:010. Definitions for 201 KAR Chapter 35.)

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813 requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations relating to alcohol and drug counselors and peer support specialists. This administrative regulation establishes definitions of terms used by the board in administrative regulations pertaining to the credentialing of alcohol and drug counselors and peer support specialists.

Section 1. (1) "Academic course" means a course that is offered by a postsecondary institution accredited by a recognized accreditation agency and that is:
   (a) An alcohol and drug counseling course, designated by title or content; or
   (b) An academic course, relevant to alcohol and drug counseling.

(2) "Applicant" means an individual who has applied for registration, certification, or licensure in accordance with KRS 309.084 or a credential holder renewing his application in accordance with KRS 309.085.

(3) "Approved" means recognized by the Kentucky Board of Alcohol and Drug Counselors.

(4) "Board" is defined by KRS 309.080(1).

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

(6) "Chair" means the chairperson or vice-chairperson of the board.

(7) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (12) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or another state or federal statute or regulation.

(8) "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(9) "Client" means an individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist; a corporate entity or other organization if the contract is to provide an alcohol and drug counselor or peer support specialist service of benefit directly to the corporate entity or organization; or a legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(10) "Clinical supervision" means a disciplined, tutorial process wherein principles are transformed into practical skills, with four (4) overlapping foci: administrative, evaluative, clinical, and supportive.

(11) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of postcredential experience and who provides supervision and whose credential is currently in good standing with the board.

(12) "Complaint" means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:
   (a) KRS Chapter 309;
   (b) Administrative regulations promulgated in accordance with KRS Chapter 309;
   (c) Another state or federal statute or regulation; or
   (d) A combination of paragraphs (a), (b), or (c) of this subsection.

(13) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.

(14) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing education experience.

(15) "Credential holder" is defined by KRS 309.080(3).

(16) "Disciplinary action" means to suspend, restrict a license, or another state or federal statute or regulation.

(17) "Educational program" means an organized learning experience:
   (a) Planned and evaluated to meet behavioral objectives; and
   (b) Presented in one (1) session or in a series.

(18) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(19) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(20) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(21) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(22) "Licensee" is defined by KRS 309.080(6).

(23) "Provider" means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

(24) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).
(25) "Registrant" is defined by KRS 309.080(9).
(26) "Relevant" means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of Section 4(2) of this administrative regulation.
(27) "Work experience" means the hours spent performing the services, tasks, and reports necessary for providing counseling or intervention or support services to a person with a substance use disorder or that person's significant others.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: June 29, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:
CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 35.
(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 35.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 35. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 35.
(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 board is unable to determine the exact number of persons who will be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of this administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.
(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 and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(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.
None
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:
GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Administrative Regulation)

201 KAR 35:015. Grandparenting of Certification to Licensure.

RELATES TO: KRS 309.084(2)(a)
STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.084(2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations. KRS 309.084(2)(a) requires the board to promulgate administrative regulations establishing a one (1) year period of time for a current certified alcohol and drug counselor to satisfy all the requirements for licensure as a clinical drug and alcohol counselor.

Section 1. Application. (1) A certified drug and alcohol counselor may apply for licensure as a clinical drug and alcohol counselor no more than one (1) year from the effective date of this administrative regulation.

(2) An applicant for licensure shall submit an Application for Grandparenting as a Licensed Clinical Alcohol and Drug Counselor and satisfy all the requirements of KRS 309.0832.

(3) The applicant shall submit a check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 3(1)(c).

(4) Upon notification of approval of the application, the applicant shall submit a check or money order payable to the Kentucky State Treasurer for the licensure fee as required by 201 KAR 35:020, Section 3(1)(c).

Section 2. Incorporation by Reference. (1) *KBADC Form 15, Application for Grandparenting as a Licensed Clinical Alcohol and Drug Counselor*, dated June 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814; fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the grandfather period where a certified alcohol and drug counselor may apply for a licensure as a clinical drug and alcohol counselor.

(b) The necessity of this administrative regulation: The necessity of this regulation is that KRS 309.084(2)(a) requires the board to promulgate administrative regulations establishing a limited period of time, not less than ninety (90) days nor more than one (1) year, during which licensure may be extended to persons not meeting all the requirements for licensure as a clinical drug and alcohol counselor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the grandparenting of current certified individuals to licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for a certified alcohol and drug counselor to apply for a license as a clinical drug and alcohol counselor.

(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will have to submit an application for licensure to demonstrate the applicant satisfies the licensure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to pay a fee for licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A certificate holder may become licensed and be able to bill for services rendered from various third party payors and eventually Medicaid.

(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 and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (5), 309.084(2)(a).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many of its current certificate holders qualifies for licensure.

(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

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

Revenues (+/-): Expenditures (+/-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(New Administrative Regulation)

201 KAR 35:055. Temporary Registration or Certification.

RELATES TO: KRS 309.083, 309.0831
STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for an applicant for temporary credentials. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An application for a credential to perform functions as a drug and alcohol peer support specialist may be submitted after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed application for temporary registration. The application shall:

(a) Include a certification by the applicant that the: 1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;

4. An attestation to being in recovery for a minimum of two (2) years from a substance-related disorder; and

5. A supervision agreement signed by the applicant and the applicant’s supervisor.

Section 2. Application for Temporary Certification. (1) An application for a credential to perform functions as a certified drug and alcohol counselor may be submitted after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed application for temporary registration. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. An official transcript for all levels of education required for certification;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and

4. A supervision agreement signed by the applicant and the applicant’s supervisor.

Section 3. Period of Temporary Credential. (1) The period of a temporary credential shall be terminated upon the expiration of two (2) years from issuance.

(2) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of a temporary credential for no more than two (2) years.

(3) The board shall grant no more than two (2) extensions of the period of a temporary credential.

Section 4. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", June 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November
Contact person: Kelly Wells

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the application process for an individual to obtain a temporary registration or certification.
(b) The necessity of this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in peer support services or alcohol and drug counseling prior to full credentialing.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute giving the board the ability to promulgate regulations regarding the requirements for obtaining a temporary registration or certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification and provide the board with the discipline option when necessary.
(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 board is unable to determine the exact number or actions that would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(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: An individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The applicant will have to pay a fee for the temporary credential.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.
(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: There are no increases in fees or funding is required to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The only new fee is the application fee for a temporary registration in the amount of fifty (50) dollars.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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? Board of Alcohol and Drug Counselors.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.083(1) and (5), 309.083, 309.0831.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.
(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.

201 KAR 35:075. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833
STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) authorizes the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.083, 309.0831, 309.0832, and 309.0833 establish the standards for the accumulation of the required
supervised work experience.

Section 1. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor. (1) An applicant may substitute, for part of the work experience, a degree in a related field such as:
   (a) Addictions;
   (b) Counseling;
   (c) Psychology;
   (d) Psychiatric nursing; or
   (e) Social work.
(2) Requests for substitution shall be submitted to the board along with transcripts from an accredited college or university.
(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.
   (a) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling, may be substituted for 4,000 hours of work experience.
   (b) A master's degree or higher in a related field may be substituted for 3,000 hours of work experience.
   (c) A bachelor's degree in a related field may be substituted for 2,000 hours of work experience.
   (d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in Section 3 of this administrative regulation.
(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor.

Section 2. Incorporation by Reference. (1) "KBADC Form 12, Workplace Experience Substitution Request", June 2015, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:
   CONTACT PERSON: Kelly Wells, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kelly Wells
(1) Provide a brief summary of
   (a) What this administrative regulation does: This administrative regulation establishes what is considered qualified work experience that may be substituted for actual alcohol and drug counseling work experience required to be credentialed by the board.
   (b) The necessity of this administrative regulation: The necessity of this regulation is to establish the work experience required to be credentialed by the board.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist an applicant and board to understand the work experience required to be credentialed by the board.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: 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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 859 Certified Alcohol and Drug Counselors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder would have to satisfy the required work experience as set out in the statute for each credential.
   (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 new cost associated to the amendment related to the administrative regulation.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder has knowledge of the required work experience as set out in the statute for each credential.
(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 and applicants.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding is required to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.
   (9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential 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 Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, and 309.0833.

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

(a) Written license, certificate, registration, or permit held by the applicant may be impacted by this administrative regulation.
(b) The notice of denial or refusal shall be sent to the last address provided to the board by the applicant or credential holder.
(c) A notice of denial or refusal shall be effective upon the expiration of the time for the credential holder to request an appeal.
(d) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.
(e) A credential holder may petition the board to stay the effectiveness of a refusal to renew.

Section 2. (1) The board may deny, refuse to renew, or refuse to reinstate a registration, certificate, or license, or denial of continuing education hours by the board.

RELATES TO: KRS 309.085, 309.086, 309.087
STATUTORY AUTHORITY: KRS 309.0813(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086 authorizes the board to refuse to issue or renew a registration, certificate, or license. KRS 309.085 authorizes the board to reinstate a registration, certificate, or license not renewed within ninety (90) days of the renewal date and requested within one (1) year of the anniversary date of issue of renewal. This administrative regulation establishes procedures for appeals from the board refusing to issue, renew, or reinstate a registration, certificate, or license or deny continuing education hours.

Section 1. The board may:
(1) Deny issuance of a registration, certificate, or license;
(2) Refuse to renew a registration, certificate, or license; or
(3) Refuse to reinstate a registration, certificate, or license.

Section 2. (1) The board may deny, refuse to renew, or refuse to reinstate a registration, certificate, or license to an applicant or credential holder who:
(a) Has entered an Alford plea guilty, pleaded guilty, or has been convicted of a felony, or
(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky; or
(c) Has violated a provision of KRS 309.080 to 309.089 or 201 KAR Chapter 35.
(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant’s or credential holder’s showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 3. (1) The board shall issue written notice of the denial or refusal and inform the applicant or credential holder of the specific reason for the board’s action, including:
1. The statutory or regulatory violation; and
2. The factual basis on which the denial or refusal is based:
(b) The notice of denial or refusal shall be sent to the last address provided to the board by the applicant or credential holder.
(c) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board’s notice.
(d) An appeal shall be:
(1) In writing;
(2) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours;
(c) Conducted in accordance with KRS Chapter 13B.

Section 5. Any request for an administrative hearing shall be sent to the Board of Alcohol and Drug Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: July 1, 2015
FILED WITH LRC: August 25, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Wells
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the appeals process from the denial of an application, refusal to renew or reinstate a registration,
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(6), 309.085, KRS 309.086, 309.087.

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
Department of Fish and Wildlife Resources
(Repealer)


RELATES TO: KRS 150.010
STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to make administrative regulations regarding game and fish, to make administrative regulations apply to a limited area or to the entire state, and to promulgate any other administrative regulations necessary to implement or carry out the provisions of KRS Chapter 150. This administrative regulation repeals 301 KAR 1:160. Stacking procedures for private waters, due to the termination of the farm pond stocking program, which will reallocate department funds and resources to other initiatives and priorities.

Section 1. 301 KAR 1:160, Stacking procedures for private waters, is hereby repealed.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 14, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2105, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing,
you may submit written comments on the proposed administrative regulation by close of business November 2, 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) 564-7168, 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 repeals 301 KAR 1:160. Stocking procedures for private waters, due to the termination of the farm pond stocking program.

(b) The necessity of this administrative regulation: Reallocation of department funds and resources to other initiatives and priorities necessitates that the farm pond stocking program be terminated. Terminating the farm pond stocking program will allow the department to expand the Fishing in Neighborhoods (FINS) program by 5 lakes. This program provides fishing opportunities close to cities of all sizes throughout the state. In addition, the FINS program is 100 percent federally funded which will allow sportmen’s dollars to be reallocated to expansion of the fish habitat program. This program will improve large reservoir fish populations and fishing opportunities across the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to make administrative regulations regarding game and fish, to make administrative regulations apply to a limited area or to the entire state, and to promulgate any other administrative regulations necessary to implement or carry out the provisions of KRS Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the department to terminate the farm pond stocking program and reallocate funds and resources towards other critical programs which will increase fishing opportunities to Kentucky anglers.

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 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: Private farm pond owners who wish to stock their renovated or new ponds with department-reared fish will be affected by this administrative regulation. The division of funds and resources will also positively impact anglers across the state through an increase in FINS lakes and reservoir habitat.

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: Private farm pond owners wishing to stock their new or renovated ponds will now have to contact commercial fish producers to obtain their fish.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fish costs from commercial producers will be variable based on the size and species of fish. There will be a slight increase in cost to the private farm pond owner when compared to the cost of the department’s farm pond stocking program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private farm pond owners will now have the option to obtain larger fish and different species than were available through the farm pond stocking program. In addition, through reallocation of funds and resources, anglers across the state will have increased fishing opportunities through an increase in FINS lakes and reservoir habitat.

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

(a) Initially: This administrative regulation change will result in no initial change in cost.

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

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

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

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

9. TIERING: Is tiering applied? Tiering was not applied because all private farm pond owners were 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 Department of Fish and Wildlife Resources Division of Fisheries 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 authorizes the department to make administrative regulations regarding game and fish, to make administrative regulations apply to a limited area or to the entire state, and to promulgate any other administrative regulations necessary to implement or carry out the provisions of KRS Chapter 150.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program 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:
VOLUME 42, NUMBER 4 – OCTOBER 1, 2015

EASTERN KENTUCKY UNIVERSITY
(New Administrative Regulation)

775 KAR 1:070. Capital construction procedures.

RELATES TO: KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, 164A.600

NECESSITY, FUNCTION AND CONFORMANCE: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions in accordance with KRS 164A.550 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provisions of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600 at Eastern Kentucky University.

Section 1. The president, acting on behalf of the Board of Regents and under the provisions of KRS 164A.560, elects to perform all functions relating to capital construction in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600.

CRAIG TURNER, Chair
DAVID TANDY, Secretary

APPROVED BY AGENCY: September 9, 2015

FILED WITH LRC: September 15, 2015 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held Monday, October 26, 2015 at 10:00 a.m., EDT, in Room 122, Jones Building, Eastern Kentucky University, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, October 21, 2015, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend this meeting is received by that date, the meeting 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 the transcript is made. Written comments shall be accepted until the close of business on November 2, 2015. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation during this period. Send written notification to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below:

CONTACT PERSON: Mr. Paul Gannoe, Director, Capital Construction and Project Administration, Eastern Kentucky University 521 Lancaster Drive, Richmond, Kentucky 40475, phone (859) 622-1497, fax (859) 622-8852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Paul Gannoe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows Eastern Kentucky University, under the provisions of KRS 164A.560, to manage and administer capital construction projects in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow Eastern Kentucky University to manage and administer capital construction projects at the agency level instead of continuing to rely on the Finance and Administration Cabinet for this service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative relation fully conforms to the requirement of KRS 164A.560 to allow the governing boards of the postsecondary educational institutions to manage and administer capital construction projects in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist Eastern Kentucky University in effective administration of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600 allowing the management and administration of capital projects at the agency level instead of the state government level. This will result in more efficient operation and implementation of the University’s capital construction program. It will relieve the Finance and Administration Cabinet of management responsibilities which can be performed more effectively by the University.

(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 This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation are Eastern Kentucky University and the Finance and Administration Cabinet’s Department for Facilities and Support Services and its Division of Engineering and Contract Administration. This regulation will have no impact on any other business, organization, or state and local government. Within Eastern Kentucky University, this regulation will affect the Director of Capital Construction and Project Administration, Project Administration Staff, the Purchasing Department and the Accounting Department. Within the Department for Facilities and Support Services, its Division of Engineering and Contract Administration will be affected. Workload and project administration duties will be shifted from the Cabinet to the University. Cabinet staff who currently serve multiple agencies will be relieved of their responsibilities to service Eastern Kentucky University projects, allowing them more time to focus on other agencies’ projects. This staff includes project managers and other administrative staff who currently spend a portion of their time managing projects for the University.

(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: Eastern Kentucky University will assume management and oversight of its capital construction projects. The Department for Facilities and Support Services will assist with the transition of projects to the University and continue to manage projects that are too far advanced to effectively transfer to the University for management. Once those projects are either transitioned or completed the Department will no longer be involved in the University’s construction program. In preparation for this, Eastern Kentucky University is adopting a Capital Construction Procedures Manual based on the procedures manual developed by the Finance Cabinet. Additional processes will be put in place as needed to ensure that the requirements of KRS 164A and KRS 45A are complied with relating to capital construction project management.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Eastern Kentucky University has project management staff in place, and through some restructuring of current responsibilities minimal staff increases will be necessary. Additional salary costs for project administration will be less than $300,000 per year. Initial costs for software and equipment will be less than $10,000. The Department for Facilities and Support Services may see a reduction in staff requirement and corresponding decrease in costs as a result of this regulation.

(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): As a result of this administrative regulation Eastern Kentucky University will be able to directly manage the schedule, budget, design and construction for its major facility projects. Since the oversight of these projects will be local better overall control will be realized. The Department for Facilities and Support Services should also realize a positive impact from this regulation by the reallocation of staff time currently dedicated to serving the needs of Eastern Kentucky University.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cost to implement the regulation initially will be minimal and will be limited to office equipment expenses of less than $10,000.

(b) On a continuing basis: The University already has project management staff in place, and as we transition to managing all of our capital projects some additional staff will be needed. Costs associated with the additional staff primarily include salaries, benefits and training. Since staff is already in place for project management the additional staffing needs should be minimal. Some current staff will be given additional responsibilities relating specifically to the management of our capital construction program. Some additional purchasing and accounting staff may be necessary. The total additional costs for staffing should be $300,000 or less per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation and enforcement of this regulation will come from university 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 additional increase in fees or funding is anticipated, based on the projected project load.

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

(9) TIERING: Is tiering applied? No. tiering is not applied. The regulation does not govern the activities of other entities, and no entities will be disproportionately impacted by this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Eastern Kentucky University’s Purchasing, Accounting and Project Administration divisions and the Finance Cabinet’s, Department for Facilities and Support Services. No other state or local government agencies are impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 154A.560 authorizes the actions taken by the administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering the program are the personnel costs and other incidental costs which should not exceed $300,000.

(d) How much will it cost to administer this program for subsequent years? The only cost of administering the program are the personnel costs and other incidental costs which should not exceed $300,000.

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:

LABOR CABINET
Department of Workers’ Claims
(New Administrative Regulation)

803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers’ compensation coverage.

RELATES TO: KRS 342.260, 342.340
STATUTORY AUTHORITY: KRS 342.260(2), 342.340
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340(1)(a) requires the Department of Workers’ Claims to promulgate administrative regulations on or before December 31, 2015, establishing information necessary to be received to create an e-mail notification system where a person may enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business workers’ compensation coverage. This administrative regulation establishes procedures and standards for e-mail notification of cancellation of specific business workers’ compensation coverage to persons registered with the Department of Workers’ Claims Insurance Coverage Look-up database.

Section 1. Definitions. (1) “Cancellation of coverage” means coverage lapse notice or an employer location has been removed from the policy.

(2) “Commissioner” is defined by KRS 342.0011(9).

(3) “Insurance Coverage Look-up database” means a location in Department of Workers’ Claims (DWC) Litigation Management System (LMS) Web site that links a subscriber to the DWC Insurance Coverage database.

(4) “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.

(5) “Person” is defined by KRS 342.0011(16).

(6) “Workers’ compensation coverage” means the insurance required by KRS 342.340(1)(a).

Section 2. Subscription Requirements. (1) Any person who wishes to receive electronic mail notification of cancellation of a specific business’ workers’ compensation coverage shall subscribe with the Department of Workers’ Claims at its Web site at www.labor.ky.gov/workersclaims by using the specific link to the LMS. The person shall provide through the link the name and address of each business whose policy is to be monitored. The subscriber shall provide through the link the e-mail address to which cancellation notices are to be sent.

(2) The term for a specific subscriber shall be for a period of one (1) year from the date of subscription. There is no limit as to how many times subsequent consecutive subscriptions may occur.

Section 3. Notification by the Commissioner. Upon notification from the insurance carrier that the specific policy selected has been cancelled, the commissioner shall notify the subscriber by e-mail to the registered e-mail address within five (5) days of the receipt of a notification of cancellation by the Department of Workers’ Claims.

DWIGHT T. LOVAN, Commissioner
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 10, 2015 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 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 close of business Monday, November 2, 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 sets forth the procedure through which one can subscribe through the LMS system to receive e-mail notification if any business’ workers’ compensation policy is cancelled or a location is removed.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(2), and KRS 342.340 require the commissioner to establish procedures for the creation or an e-mail notification system to allow a person to be notified of any cancellation of a specific business’ workers’ compensation coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the method by which the person can subscribe in the DWC Insurance Coverage Look-up database to receive the requested information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will provide prompt notification of workers’ compensation insurance cancellation to the subscriber.

(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: An individual, insurer, company, organization, society, partnership, syndicate, business trust or corporation, and every other related legal entity.

(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, through subscription, receive the requested information in a timely manner.

(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): The notification system will provide them with a fast and efficient method to determine whether a business has workers’ compensation in effect.

(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) 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 342.260 and KRS 342.340.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no costs due to this 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 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:

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

902 KAR 20:205. Tuberculosis (TB) testing for health care workers.

RELATES TO: KRS 215.520-215.600, 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 215.590 requires a health service or health facility licensed pursuant to KRS Chapter 216B or KRS Chapter 333 to report
knowledge of a person who has active tuberculosis to the local health department. This administrative regulation establishes requirements for tuberculosis (TB) testing of health care workers in health facilities or settings licensed under KRS Chapter 216B or KRS Chapter 333. These procedures are necessary to minimize the transmission of infectious tuberculosis disease among staff and patients or residents of health facilities.

Section 1. Definitions. (1) "Air changes per hour" or "ACH" means the air change rate expressed as the number of air exchange units per hour.

(2) "Airborne Infection Isolation (All) room" means a room, formerly called a negative pressure isolation room, which is designed to maintain All and is a single-occupancy patient-care room used to isolate persons with suspected or confirmed infectious TB disease.

(3) "BAMT conversion" means a change in the BAMT test result, on serial testing, from negative to positive over a two (2) year period.

(4) "Blood Assay for Mycobacterium tuberculosis" or "BAMT" means a diagnostic blood test that:

(a) Assesses for the presence of infection with M. tuberculosis; and

(b) Reports results as positive, negative, indeterminate, or borderline. This test includes interferon-gamma (IFN-γ) release assays (IGRA).

(5) "Boosting" or the "booster phenomenon" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TSTs) may restore the sensitivity.

(6) "Extrapulmonary tuberculosis" means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes), and may include the presence of pulmonary TB or other infectious TB diseases.

(7) "Health care setting" or "health facility" means the following settings:

(a) Abortion facility;

(b) Adult day health program;

(c) Alzheimer’s nursing home;

(d) Ambulatory care clinic;

(e) Ambulatory surgical center;

(f) Blood establishment;

(g) Cancer treatment center;

(h) Comprehensive physical rehabilitation hospital;

(i) Critical access hospital;

(j) Family health centers;

(k) Free-standing birth center;

(l) Group home;

(m) Home health agency;

(n) Hospice program;

(o) Hospital;

(q) Intermediate care facility;

(r) Intermediate care facility for individuals with an intellectual disability (ICF/IID);

(s) Limited services clinic;

(t) Medical laboratory;

(u) Mobile health service;

(v) Network;

(w) Nursing facility;

(x) Nursing home;

(y) Nursing pool;

(z) Outpatient health care center;

(aa) Pain management facility;

(bb) Personal care home;

(cc) Prescribed pediatric extended care facility;

(dd) Psychiatric hospital;

(ee) Primary care center;

(ff) Private duty nursing agency;

(gg) Level I or Level II psychiatric residential treatment facility;

(hh) Rehabilitation agency;

(ii) Renal dialysis facility;

(jj) Residential hospice facility; (kk) Rural health clinic;

(ll) Special health clinic;

(mm) Specialty intermediate care clinic;

(nn) Specialized medical technology service; or

(oo) Behavioral health services organization.

(8) "Health care workers" or "HCWs" means all paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air, and shall include:

(a) Physicians;

(b) Physician assistants;

(c) Nurses;

(d) Medical assistants;

(e) Nursing assistants or nurse aides;

(f) Therapists;

(g) Pharmacists;

(h) Laboratory personnel;

(i) Dental personnel;

(j) Psychiatrists;

(k) Laboratory personnel;

(l) Autopsy personnel;

(m) Students and trainees;

(n) Contractual and community-based physicians and other healthcare professionals and staff not employed by the health care facility; and

(Persons (e.g., clerical, dietary, housekeeping, laundry, security, maintenance, billing, and volunteers) not directly involved in patient care but potentially exposed to infectious agents that may be transmitted to and from health care workers and patients or residents.

(9) "Induration" means a firm area in the skin that develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and that is measured in accordance with Section 3(2) of this administrative regulation.

(10) "Infectious tuberculosis" means pulmonary, laryngeal, endobronchial, or tracheal TB disease or a draining TB skin lesion that has the potential to cause transmission of tuberculosis to other persons.

(11) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease having been manifested.

(12) "Multidrug-resistant tuberculosis" or "MDR TB" means TB disease caused by M. tuberculosis organisms that are resistant to at least isoniazid (INH) and rifampin.

(13) "Nucleic Acid Amplification" or "NAA" means a laboratory method used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence usually for detecting and identifying a microorganism.

(14) "Polymerase chain reaction" or "PCR" means a system for in vitro amplification of DNA or RNA that can be used for diagnosis of infections.

(15) "Staggered tuberculosis testing" means the testing of a health care worker in or before the same month as the anniversary date of his or her date of initial employment, or testing in or before the worker’s birth month so that all health care workers do not have tuberculosis testing in the same month.

(16) "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 3(4) of this administrative regulation.

(17) "Tuberculin Skin Test" or "TST" means a diagnostic aid for finding M. tuberculosis infection that:

(a) Is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD); and

(b) Has results read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(18) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 3(3) of this administrative regulation.
(19) “Tuberculosis Risk Assessment” means an initial and ongoing evaluation of the risk for LTBI or active TB disease in a particular health care worker and is performed in accordance with the provisions established in Sections 4, 5, 7, and 11 of this administrative regulation.

(20) “Two-step TST” or “two-step testing” means a series of two (2) TSTs administered seven (7) to twenty one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including health care workers and residents of long-term care settings, to reduce the likelihood of mistaking a boosted reaction for a new infection.

Section 2. TB Infection Control Program. (1) Each health facility shall have a written TB infection control plan that is part of an overall infection control program.

(2) The TB infection control plan shall be designed to control M. tuberculosis transmission through early detection, isolation, diagnosis, and treatment of persons with active TB disease.

(3) A hierarchy of control measures shall be used, including:

(a) Administrative controls;

(b) Environmental controls, and

(c) Respiratory protection.

(4) A TB infection control plan shall include a listing of the job series of health care workers or another standardized method to describe which health care workers shall be included in the facility TB screening program.

(5) At a minimum, a health care worker shall be included in the TB screening program if the worker:

(a) Has duties that involve face-to-face contact with patients with suspected or confirmed active TB disease, including transport staff;

(b) Has the potential for exposure to M. tuberculosis through air space shared with persons with suspected or confirmed active TB disease of the respiratory system;

(c) Has duties that involve the processing of laboratory specimens for TB testing or TB cultures;

(d) Has duties that have the potential for exposure to the environment of care of persons with suspected or confirmed active TB disease; or

(e) Performs other tasks or procedures which may generate infectious aerosol droplet nuclei in which the worker has or may have exposure to TB disease.

(6) A facility may voluntarily include additional or all health care workers in the TB screening program based upon:

(a) TB incidence (local or regional);

(b) Other TB risk factors;

(c) Changes in the epidemiology of TB (local or regional);

(d) Patient safety strategies;

(e) Risk management strategies; or

(f) Other factors.

Section 3. Tuberculosis Testing Requirements for TSTs. (1) Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(2) A TST shall be performed by:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A registered nurse, or

(d) A pharmacist.

(b) A licensed practical nurse under the supervision of a registered nurse may perform a TST.

(3) Induration Measurements.

(a) The diameter of the firm area shall be measured transversely (i.e., perpendicularly) to the long axis of the forearm to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(b) The diameter of the firm area shall not be measured along the long axis of the forearm.

(c) A reaction of ten (10) millimeters or more of induration, if the TST result is interpreted as positive, shall be considered highly indicative of tuberculosis infection in a health care setting.

(d) A reaction of five (5) millimeters to nine (9) millimeters of induration may be significant in certain individuals with risk factors described in Section 4(3) of this administrative regulation for rapid progression to active tuberculosis disease if infected.

(4) Tuberculosis (TB) disease.

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities) illness.

1. Tuberculosis that is found in the lungs is called pulmonary TB and may be infectious.

2. Extrapulmonary disease (occurring at a body site outside the lungs) may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition is termed “inactive TB” and shall be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or a specific chest radiographic finding.

(5)(a) A TST conversion shall have occurred if the size of the measured TST induration increases by ten (10) millimeters or more during a two (2) year period in a health care worker with a:

1. Documented baseline two-step TST result measured as zero (0); or

2. Previous follow-up screening TST result with induration measured as one (1) millimeter to nine (9) millimeters and interpreted as negative during serial testing.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 4. TB Risk Assessment and Tuberculin Skin Tests or BAMTs for Health Care Workers on Initial Employment. (1) Risk Assessment.

(a) To perform a TB Risk Assessment, a questionnaire shall be used and the following factors shall be assessed:

1. The clinical symptoms of active TB disease;

2. Events and behaviors that increase the risk for exposure to M. tuberculosis and the risk of acquiring LTBI; and

3. Medical risk factors that increase the risk for a health care worker with LTBI to develop active TB disease.

(b) A TB Risk Assessment questionnaire may be obtained from the Kentucky Department for Public Health (published online at http://chfs.ky.gov/dph/epi/tb.htm) or from a national medical or public health organization, including the American Academy of Pediatrics or the Centers for Disease Control and Prevention.

(c) TB Risk Assessment questions shall be on a facility-approved form or incorporated into the facility’s medical history forms or into forms or other features of the facility’s electronic medical record systems.

(2)Exclusion of Health Care Workers from Tuberculin Skin Tests or BAMTs Upon Initial Employment in a Health Facility. A TST or BAMT shall not be required at the time of initial employment if the health care worker provided medical documentation for one (1) of the following as part of a TB Risk Assessment:

(a) A prior TST of ten (10) millimeters or more of induration if the TST result was interpreted as positive;

(b) A prior TST of five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in subsection (3) of this section for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion;

(f) The health care worker is currently receiving or has completed treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention;

(g) The health care worker has completed a course of multiple-drug therapy for active TB disease recommended by the Centers for Disease Control and Prevention; or
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(h) The health care worker provided medical documentation that he or she has had a TST or BAMT within three (3) months prior to initial employment at the facility and has previously been in a serial testing program at another medical facility or health care setting.

(3) A medical reason for a health care worker’s TST result of five (5) millimeters to nine (9) millimeters of induration to be interpreted as positive may include:
   (a) HIV-infection;
   (b) Immunosuppression from disease or medications;
   (c) Fibrotic changes on a chest radiograph consistent with previous TB disease; or
   (d) Recent contact with a person who has active TB disease.

(4) TB Risk Assessments and Tuberculin Skin Tests or BAMTs for Health Care Workers upon Initial Employment in a Health Facility.

(a) A baseline TB Risk Assessment, and a TST or BAMT if not excluded pursuant to subsection (2) of this section, shall be initiated on each new health care worker before or during the first week of employment. The results shall be documented in the health care worker’s medical record or electronic medical record within the first month of employment.

(b) A TB Risk Assessment required by paragraph (a) of this subsection and other sections shall be performed by:
   a. A physician;
   b. An advanced practice registered nurse;
   c. A physician assistant;
   d. A registered nurse, or
   e. A pharmacist.

2. A licensed practical nurse under the supervision of a registered nurse may perform the TB Risk Assessment.

(c) An initial or first-step TST result of ten (10) millimeters or more of induration may be interpreted as positive for a new health care worker.

(d) An initial or first-step TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive for a new health care worker who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

(5)(a) A two-step baseline TST shall be required for a health care worker aged fourteen (14) years and older whose initial or first-step TST, initiated before or during the first week of employment pursuant to subsection (4)(a) of this section, is interpreted as negative.

(b) The second step-test shall be initiated seven (7) to twenty-one (21) days after the first test.

1. A TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive on the second step TST for a health care worker who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

2. If a health care worker aged fourteen (14) years and older does not have a medical reason as identified in subsection (3) of this section and the worker’s initial or first-step TST shows less than ten (10) millimeters of induration and a second-step TST shows ten (10) millimeters or more of induration, the TST shall be interpreted as positive.

3. The initial TST shall count as the second-step TST if the health care worker aged fourteen (14) years and older provided medical documentation that he or she has had a one-step TST interpreted as negative within one (1) year prior to initial testing at the time of initial employment.

(6) A BAMT may be used in place of, but not in addition to, a TST, and:
   (a) If a BAMT is performed before or during the first week of employment and the result is positive or negative, only one (1) BAMT test result shall be required; and
   (b) A second BAMT shall be performed if the BAMT result is borderline, indeterminate, or invalid.

Section 5. Annual TB Risk Assessments and Annual Tuberculin Skin Tests or BAMTs for Health Care Workers. (1) A health care worker shall have an annual TB risk assessment and annual education about the signs and symptoms of active TB disease.

(2) A health care worker included in the TB screening program, as determined by the health facility’s TB infection control plan, shall also have annual TB testing.

(3) The requirements established in this subsection shall apply during annual TB testing.

(a) A health care setting shall use staggered tuberculosis testing to assure that all health care workers are not tested in the same month. Staggered testing shall be performed monthly, quarterly, or semiannually.

(b) A health care worker who has worked eleven (11) months or more in the facility and who has never had a TST interpreted as positive, or has never had a positive BAMT, shall have a TB Risk Assessment and a TST or BAMT annually in or before the same month as the anniversary date of his or her last TB Risk Assessment and TST or BAMT.

(c) A health care worker who has worked eleven (11) months or more in the facility and who has had a previous TST interpreted as positive, or a previously positive BAMT, shall:

1. Have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and
2. Not be required to submit to an annual TST or BAMT.

Section 6. Medical Record or Electronic Medical Record Documentation for Health Care Workers. (1) The TB Risk Assessment shall be documented in each health care worker’s medical record or electronic medical record by recording the date of the assessment and the results.

(2) The TST result of each health care worker shall be documented in the worker’s medical record or electronic medical record by recording the date of measurement, millimeters of induration, and interpretation of the results for each TST performed.

(3) The medical record shall be labeled inside or the electronic medical record shall be labeled with the notation “TST Positive” for each health care worker with a reaction of:

(a) Ten (10) millimeters or more of induration if the TST result was interpreted as positive; or
(b) Five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive.

(4) If performed, the BAMT result for each health care worker shall be documented in the worker’s medical record or electronic medical record by recording the date and result as positive, negative, borderline, or indeterminate.

(b) A health care worker has a positive BAMT, the worker’s medical record shall be labeled inside or the electronic medical record shall be labeled with the notation “BAMT Positive.”

Section 7. Medical Evaluations, Chest X-rays, and Monitoring of Health Care Workers with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a health care worker shall have a medical evaluation, including an HIV test unless the health care worker opts out of HIV testing, if the health care worker is found to have a:

(a) TST result of ten (10) millimeters or more induration if the TST result is interpreted as positive;
(b) TST result of five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive;
(c) Positive BAMT;
(d) TST conversion; or
(e) BAMT conversion.

(2) A chest x-ray shall be performed as part of the medical evaluation required by subsection (1) of this section unless a chest x-ray performed within the previous two (2) months showed no evidence of tuberculosis disease.

(3)(a) A health care worker with no clinical evidence of active
TB disease, upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant and a negative chest x-ray, shall be offered treatment for LTBI unless medically contraindicated.

(b) A health care worker who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements established in this paragraph.

1. A health care worker who has a positive TST or a positive BAMT at the time of initial employment and works eleven (11) months or longer in the health facility shall:
   a. Have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and
   b. Not be subject to an annual TST or BAMT.

2. A health care worker with a documented TST conversion or a BAMT conversion shall:
   a. Be educated about and advised of the clinical symptoms of active TB disease;
   b. Have an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years after conversion, followed by an annual TB Risk Assessment in or before the same month as the anniversary date of the worker's last TB Risk Assessment; and
   c. Not be subject to an annual TST or BAMT.

3. A health care worker with a positive TST, a positive BAMT, a TST conversion, or a BAMT Conversion shall be:
   a. Educated about and advised of the clinical symptoms of active TB disease and
   b. Instructed to report to his or her facility supervisor and seek medical attention promptly if symptoms persist for three (3) weeks or longer.

(4) Documentation that the health care worker was educated and advised of the clinical symptoms of active TB disease shall be included in the health care worker's medical record or electronic medical record.

Section 8. Medical Evaluations, Chest X-rays, Laboratory Tests, Treatment, and Monitoring of Health Care Workers with Suspected TB Disease or Active TB Disease. (1) A health care worker with signs or symptoms of an abnormal chest x-ray, consistent with TB disease, shall:

(a) Be immediately excluded from work;

(b) Be isolated in an Air room, referred to a facility with an Air room, or placed in home isolation in collaboration with the local health department;

(c) Be evaluated for active tuberculosis disease and, if needed, treated with multi-drug TB therapy as recommended by the Centers for Disease Control and Prevention; and

(d) Remain off work until cleared as being noninfectious for TB by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

(2) A health care worker under treatment for suspected or confirmed pulmonary tuberculosis disease, suspected or confirmed extrapolmonary tuberculosis disease, or other suspected or confirmed infectious tuberculosis diseases caused by either non-MDR TB or MDR-TB may return to work in the facility, as recommended by the Centers for Disease Control and Prevention, after being declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

Section 9. Responsibility for Screening and Monitoring Requirements: Health Care Workers. (1) A facility's administrator or administrator's designee shall be responsible for ensuring that all TB Risk Assessments, TSTs, BAMTs, chest x-rays, and sputum specimen submissions for health care workers comply with the requirements of Section 3 through Section 8 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for training or professional assistance from the local health department or from a licensed medical provider.

(3) A TST with the date of measurement and millimeters of induration, interpretation of the results, the date performed, reported results of all BAMTs, chest x-rays, sputum specimen AFB smears, TB cultures, TB-related NAA tests, and TB-related PCR tests for a health care worker shall be recorded as a permanent part of the worker's medical record or electronic medical record.

(b) Copies of the health care worker's medical record or electronic medical record shall be provided to the worker upon request if the worker transfers to another health facility.

Section 10. Reporting to Local Health Departments. (1) A health facility's administrator or the administrator's designee shall report a health care worker identified with one (1) of the following to the local health department having jurisdiction within one (1) business day of becoming known:

(a) A TST conversion or BAMT conversion on serial testing or identified in a contact investigation;

(b) A chest x-ray which is suspicious for TB disease;

(c) A sputum smear positive for acid-fast bacilli;

(d) A rapid laboratory test positive for Mycobacterium tuberculosis DNA or RNA, such as Mycobacterium tuberculosis positive NAA tests or PCR tests;

(e) A sputum culture positive for Mycobacterium tuberculosis; or

(f) The initiation of multi-drug antituberculosis treatment for active TB disease in a health care worker.

(2) A facility's administrator or the administrator's designee shall report a health care worker identified with one (1) of the following to the local health department having jurisdiction within five (5) business days of becoming known:

(a) A TST of ten (10) millimeters or more induration at the time of initial employment at the facility if the TST result was interpreted as positive;

(b) A TST result of five (5) or more millimeters of induration for a health care worker at the time of initial employment who has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive; or

(c) A positive BAMT at the time of initial employment.

Section 11. Treatment for LTBI. (1) A health care worker with a TST conversion or a BAMT conversion with no clinical evidence of active TB disease upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant and a negative chest x-ray shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) A recently infected person as described in subsection (1) of this section shall have:

(a) A medical evaluation;

(b) An HIV test unless the individual opts out of HIV testing; and

(c) A chest x-ray.

(3) An individual who meets the criteria listed in subsection (1) of this section and who has no signs or symptoms of tuberculosis disease by medical evaluation or on chest x-ray shall be offered treatment for LTBI, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician, advanced practice registered nurse, or physician assistant.

(4) If a health care worker refuses treatment for LTBI after a TST conversion or a BAMT conversion or has a medical contraindication, the worker shall:

(a) Be educated about, and advised of, the clinical symptoms of active TB disease;

(b) Have a TB Risk Assessment, which includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years following TST conversion or BAMT conversion, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and

(c) Not be required to submit to an annual TST or BAMT.

Documentation that the health care worker was educated and advised of the clinical symptoms of active TB disease shall be
included in the health care worker’s medical record or electronic medical record.

(5) A health care worker who has a TST result of ten (10) millimeters or more induration, if the TST result is interpreted as positive, or a positive BAMT at the time of initial employment shall be offered treatment for LTBI, unless medically contraindicated.

(6) A health care worker who has a TST result of five (5) millimeters to nine (9) millimeters of induration upon initial employment and who has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive shall be offered treatment for LTBI, unless medically contraindicated.

(7) If a health care worker refuses treatment for LTBI detected at the time of initial employment in the facility or has a medical contraindication, the worker shall:

(a) Be educated about and advised of the clinical symptoms of active TB disease;

(b) Have a TB Risk Assessment that includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years after the date of initial employment in the facility, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of the worker’s last TB Risk Assessment; and

(c) Not be required to submit to an annual TST or BAMT.

(8) Documentation that the health care worker was educated about and advised of the clinical symptoms of active TB disease shall be included in the health care worker’s medical record or electronic medical record.

(9) A health care worker who works eleven (11) months or longer in the facility and who provided medical documentation that he or she has completed treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention shall:

(a) Not be required to submit to an annual TST or BAMT; and

(b) Receive education on the clinical symptoms of active TB disease during a TB Risk Assessment annually in or before the same month as the anniversary date of his or her last TB Risk Assessment.

Section 12. Compliance Date. All health care settings or health facilities subject to the tuberculosis testing requirements of this administrative regulation shall demonstrate compliance no later than ninety (90) days after the effective date of this administrative regulation.

Section 13. Supersede. If any requirement stated in another administrative regulation within 902 KAR Chapter 20 contradicts a requirement stated in this administrative regulation, the requirement stated in this administrative regulation shall supersede the requirement stated elsewhere within 902 KAR Chapter 20.


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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Mynear; Robert L. Brawley, MD, MPH; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for tuberculosis (TB) testing of health care workers in health facilities or settings licensed and regulated by the Office of Inspector General (OIG) under KRS Chapter 216B or KRS Chapter 333.

(b) The necessity of this administrative regulation: This administrative regulation assists in the effective administration of the statutes by establishing procedures to minimize the transmission of infectious tuberculosis disease among health care workers, staff and patients or residents of health facilities or settings licensed and regulated by the OIG under KRS Chapter 216B or KRS Chapter 333.

(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 and procedures to ensure safe, adequate, and efficient health care settings and health services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation which establishes requirements that help ensure compliance with the Centers for Disease Control and Prevention’s (CDC) guidelines for preventing the transmission of infectious TB disease in hospitals, long-term care settings, and other health facilities or settings licensed and regulated by the OIG under KRS Chapter 216B or KRS Chapter 333.

(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 impacts health care workers in the following health facilities regulated by the OIG (the number of currently licensed facilities appears in parenthesis next to the facility type): Abortion facilities (1); adult day health centers (105); Alzheimer’s nursing homes (1); ambulatory care clinics (18); ambulatory surgical centers (39); blood establishments (135); chemical dependency treatment service (4); community mental health centers (14); family care homes (64); freestanding birthing centers (no facilities currently licensed in this category); group homes (38); home health agencies (109); hospice (24); hospitals, including deemed

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hospitals (98), nondeemed hospitals (31), deemed comprehensive physical rehabilitation hospitals (4), nondeemed comprehensive physical rehabilitation hospitals (2), critical access hospitals (29), deemed psychiatric hospitals (10), nondeemed psychiatric hospitals (3); intermediate care facilities (9); Intermediate Care Facilities for Individuals with Intellectual Disabilities (14); limited services clinics (51); medical laboratories (29); mobile health services (146); networks (5); nursing facilities (281); nursing homes (6); nursing pools (63); outpatient health care clinics (1); non-physician owned pain management facilities (5); personal care homes (157); prescribed pediatric extended care facilities (6); primary care centers (142); private duty nursing agencies (10); psychiatric residential treatment facilities (24); rehabilitation agencies (279); renal dialysis facilities (109); residential hospice facilities (8); rural health clinics (177); special health clinics (120); specialty intermediate care clinics (1); and specialized medical technology service (122).

(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: Health care settings identified in question (3) will be required to comply with TB screening requirements established in this administrative regulation which are consistent with the CDC’s guidelines for preventing the transmission of TB in health care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Health care settings should be in compliance with the CDC’s guidelines for preventing the transmission of TB in health care facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Staff and patients or residents in health facilities licensed and regulated by the OIG will benefit from revised standards intended to prevent the transmission of TB.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts health care workers in the following health facilities regulated by the OIG (the number of currently licensed facilities appears in parenthesis next to the facility type): Abortion facilities (1); adult day health centers (105); Alzheimer’s nursing homes (1); ambulatory care clinics (18); ambulatory surgical centers (39); blood establishments (135); chemical dependency treatment service (4); community mental health centers (14); family care homes (64); freestanding birth centers (no facilities currently licensed in this category); group homes (38); home health agencies (109); hospice (24); hospitals, including deemed hospitals (98), nondeemed hospitals (31), deemed comprehensive physical rehabilitation hospitals (4), nondeemed comprehensive physical rehabilitation hospitals (2), critical access hospitals (29), deemed psychiatric hospitals (10), nondeemed psychiatric hospitals (3); intermediate care facilities (9); Intermediate Care Facilities for Individuals with Intellectual Disabilities (14); limited services clinics (51); medical laboratories (29); mobile health services (146); networks (5); nursing facilities (281); nursing homes (6); nursing pools (63); outpatient health care clinics (1); non-physician owned pain management facilities (5); personal care homes (157); prescribed pediatric extended care facilities (6); primary care centers (142); private duty nursing agencies (10); psychiatric residential treatment facilities (24); rehabilitation agencies (279); renal dialysis facilities (109); residential hospice facilities (8); rural health clinics (177); special health clinics (120); specialty intermediate care clinics (1); and specialized medical technology service (122).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 215.520-215.600, 216B.010-216B.131

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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:
Members: Senators Ernie Harris, Perry Clark, Allice Forgy Kerr, Julie Raque Adams and Representatives Denver Butler, Will Coursey, Mary Lou Marzian and Tommy Turner.

LRC Staff: Donna Little, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Emily Caudill, Ange Bertholf, and Betsy Cupp.

Guests: Becky Gilpatrick, Kentucky Higher Education Assistance Authority; Noel Caldwell, Office of Secretary of State; Dinah Bevington, Personnel Cabinet; Jennifer Jones, Brian Thomas, Kentucky Retirement Systems; Stewart Hendrix, Jennifer Linton, Finance and Administration Cabinet; Steve Hart, Joel Trombou, Board of Pharmacy; Charles Lykins, Board of Cosmetology; Nathan Goldman, Board of Nursing; Ron Brooks, David Wicker, Department for Fish and Wildlife; John Cummings, Parole Board; Amy Barker, Department of Corrections; Nancy Albert, Rebecca Goodman, Mike Hancock, Department of Transportation; Beth Brinley, Beth Kuhn, Clay Lamb, Education and Workforce Development Cabinet; Frederick Higdon, Steve Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Shonita Bossier, Jessica Sharpe, Charles Vice, Department of Financial Institutions; Jamie Eads, Marc Guilfoil, Mary Scollay, Susan Speckert, Horse Racing Commission; Jack Coleman, Michael Davis, Gary Feck, Tina Quire, Department of Housing Buildings and Construction; David Moore, Division of Plumbing; Eric Friedlander, Dionia Mullins, Office of Health Policy; Bill Nold, Chandon Venetozzi, Office of Kentucky Health Benefit Exchange; Stephanie Brammer-Barnes, Maryellen Mynear, Cabinet for Health and Family Services, Office of Inspector General; Laura Begin, Justin Carey, Department for Public Health; Stuart Owen, Department of Medicaid Services; Mary Sparrow, Department of Child Support Enforcement; Virginia Carrington, Elizabeth Caywood, Kathleen Hines, Division of Family Support, Paul Bergmann, Janna Dowds, Marlene Grissom, Scenic Kentucky; Tom Fahey, Lamar Advertising; Leigh Ann Thacker, Outdoor Advertising of Kentucky; Donald Adkisson, Kentucky Chamber of Commerce; Gene Harmon, David Lyne, Bruce Wilkerson, City of Bowling Green; Martin Malone, Peter Ecabert, Rick Hiles, Kentucky Horsemen's Benevolent & Protective Association; Matt Hammond, Mechanical Contractors Association of Kentucky, Steven Milby, Milby Plumbing and Piping; Ricky Russ, Union Plumbers of Kentucky Pipe Trades Local 502; Vicki Darnell, Ephraim McDowell Health; Neal Gold, Westlake Regional Hospital; Matt Klein, attorney, St. Elizabeth Healthcare and Baptist Health; and Kip McNally, Commonwealth Eye Center;

The Administrative Regulation Review Subcommittee met on Tuesday, September 8, 2015, and submits this report:

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements and were deficient:

PUBLIC PROTECTION CABINET: Horse Racing Commission:

Thoroughbred Racing
810 KAR 1:300. International medication protocol as a condition of a race. Jamie Eads, director; Marc Guilfoil, director of racing; and Susan Speckert, general counsel, represented the commission. In response to a question by Co-Chair Harris, Ms. Speckert stated that stakeholders concerned with 810 KAR 1:300, 811 KAR 1:300, and 811 KAR 2:300 had not reached an agreement since these administrative regulations were deferred at the August ARRS meeting.

In response to a question by Co-Chair Marzian, Ms. Speckert stated that the commission did not agree to defer 810 KAR 1:300, 811 KAR 1:300, and 811 KAR 2:300 until the Attorney General issued an opinion regarding if these administrative regulations improperly delegated commission authority to the racetracks. The commission was confident that there was no improper delegation of authority.

Senator Raque Adams stated that she had expected some racetrack representatives to be present because the Subcommittee requested their attendance during discussions at the August 11 meeting. Ms. Speckert stated that the commission received a letter from Turfway Park stating that they did not have an opposition to these administrative regulations.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Representative Butler made a motion, seconded by Representative Turnier to find 810 KAR 1:300, as amended, 811 KAR 1:300, as amended, and 811 KAR 2:300, as amended, deficient. A roll call vote was conducted, and with six (6) votes to find the administrative regulations deficient, and two (2) votes not to find them deficient, the administrative regulations, as amended, were found deficient.

Compiler's note: Pursuant to KRS 13A.335(4)(b), a new Section 5 was added to this administrative regulation to reflect the finding of deficiency.

Harness Racing
811 KAR 1:300. International medication protocol as a condition of a race.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Compiler's note: Pursuant to KRS 13A.335(4)(b), a new Section 5 was added to this administrative regulation to reflect the finding of deficiency.

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:300. International medication protocol as a condition of a race.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Compiler's note: Pursuant to KRS 13A.335(4)(b), a new Section 5 was added to this administrative regulation to reflect the finding of deficiency.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy; State Health Plan
900 KAR 5:020. State Health Plan for facilities and services.

Eric Friedlander, deputy secretary, represented the cabinet. Julie Lee, MD, president, and Chip Richardson, MD, member, represented the Kentucky Academy of Eye Physicians and Surgeons and appeared in opposition to this administrative regulation. Vicki Darnell, CEO, Ephraim McDowell Health; Neal Gold, CEO, Westlake Regional Hospital; Matt Klein, attorney, St. Elizabeth Healthcare, Baptist Health; and Kip McNally, attorney, Commonwealth Eye Clinic, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Marzian, Mr. Friedlander stated that this administrative regulation was being amended to incorporate accessibility and quality standards. This administrative regulation increased accessibility, but quality standards was the major change. There had been a lot of stakeholder input in developing this administrative regulation.

Co-Chair Harris proposed a subcommittee amendment to: (1) amend Section 2(1) and the material incorporated by reference to change the edition date; and (2) amend, within the State Health Plan incorporated by reference, review criteria #1 for Ambulatory
Surgical Centers (ASCs) to: (a) provide that an application to establish a megavoltage radiation service is consistent with the plan if it will be majority-owned by a Kentucky Hospital and will be accredited by the American College of Surgeons Commission on Cancer; and (b) delete the requirement that the accreditation be as an Academic Comprehensive Cancer Program. Co-Chair Harris stated that, in Ohio and Pennsylvania, similar measures had harmed hospitals. ASCs had expanded greatly in those states, while hospitals were reduced. This administrative regulation expanded health care access without regard to fiscal responsibilities for the associated expanded costs. Access was expanded in one way, but if hospitals closed as a result, access would be reduced in another way, especially for those paying via private insurance. Access may also be reduced because ASCs typically had shorter business hours than hospitals.

Co-Chair Harris proposed a second subcommittee amendment to: (1) amend Section 2(1) and the material incorporated by reference to change the edition date; and (2) amend, within the State Health Plan incorporated by reference, review criteria #1, 3, 4, 5, 6, 7, and 8 for Ambulatory Surgical Centers (ASCs) to: (a) provide that an application to the State Health Plan must be a joint application between the proposed facility and the county in which it is located; (b) amend criteria #3, to provide that an ASC shall be limited to a specific type of procedure, rather than be in a county with a population greater than or equal to 75,000; (c) delete criteria #4 and #5; and (d) require the remaining criteria and an internal cross-reference to reflect the deletion of those two (2) items.

Mr. Friedlander stated that the office did not agree with the subcommittee amendments because these changed the State Health Plan significantly. Co-Chair Harris stated that he had other subcommittee amendments that he had planned to propose, but that he would not do so because the agency seemed unwilling to accept any amendments. On a voice vote, the Subcommittee voted to accept the subcommittee amendments; however, because the agency did not agree to accept the subcommittee amendments, the amendments were not approved.

Co-Chair Harris stated that there were additional administrative regulations, 900 KAR 6:055, 6:070, 6:075, and 6:090, which related to the State Health Plan as it pertains to the Centers of Need. Co-Chair Harris stated that some of these criteria had to be revised or revised definitively on the agenda for the October 13 meeting of the Subcommitteee; therefore, it was prudent to defer refer 900 KAR 5:020 so that these related administrative regulations could be considered together as a whole package. Mr. Friedlander stated that the State Health Plan was not eliminating the need-based part of the process and the office did not agree to defer consideration of this administrative regulation to the October 13 Subcommittee meeting.

In response to a question by Senator Raque Adams, Mr. Friedlander stated that the State Health Plan did have utilization criteria. There were exceptions to utilization criteria prior to this amendment; therefore, the State Health Plan was in full compliance with the current budget language. Senator Raque Adams stated that LRC's budget analysts had advised that this administrative regulation was in direct conflict with the current budget language.

Dr. Lee stated that the Kentucky Academy of Eye Physicians and Surgeons supported the concept of improving access for Kentucky patients; however, changes to the ophthalmology provisions were made very late and did not seem to significantly improve access. Advanced laser technology, which was a component of the plan, was unnecessary for cataract removal, was not the standard of care, and did not provide cost savings, and most Kentucky physicians did not use advanced laser technology for cataract removal. Advanced laser technology for cataract removal increased out-of-pocket costs to the patients and had not been shown to be an improvement over other methods of removal. Typically, cataract surgery was performed on older patients who would be under Medicare, not under the Health Benefits Exchange program. Another component of the State Health Plan was the ten (10) year licensure requirement for an ASC, which would reduce the number of eligible physicians at a time when there was already a shortage of ophthalmologists in general.

Dr. Richardson stated that, although he had been practicing ophthalmological cataract surgery for over eleven (11) years, he would not qualify for the ten (10) year licensure requirement to have an ASC. Dr. Richardson agreed that most Kentucky ophthalmologists did not use advanced laser technology and that there were cost concerns with its use. The State Health Plan increased barriers to entry.

Mr. McNally stated that the ophthalmology exemption in the State Health Plan violated Kentucky's Administrative Procedures Act because there was no requirement for need in accordance with KRS Chapter 216B and there was no requirement for economic feasibility. The exemption of one (1) specialty may constitute special legislation. Mr. McNally stated that he had cataract surgery with advanced laser technology, and he had experienced some benefits with that method. There was no input from many stakeholders. There were concerns that these specialty ASCs would drive down prices through competition to the point of cutting corners, which may result in poor care.

Mr. Klein stated that St. Elizabeth Healthcare, Baptist Health, supported the certificate of need modernization. There was a need for reform; however, three (3) amendments were requested. If access was an issue, radiation therapy provisions should not be limited to academic medical centers. Changes should be made to the megavoltage provisions. Mr. Klein also stated the need for an amendment such as the one made for the Kentucky Hospital Association.

Mr. Gold stated that Westlake Regional Hospital in Adair County was the number one hospital in a dire financial state in Kentucky. Ambulatory surgery was one of the few profitable programs at Westlake Regional Hospital, and the certificate of need process was crucial to the facility's fiscal sustainability.

Mr. Darrell stated that Ephraim McDowell Health appreciated the Subcommittee's finding of deficiency for this administrative regulation. Ephraim McDowell Health's commitment was to providing patient access.

Co-Chair Marzian stated that the bottom line was providing access for Kentucky citizens. A motion was made by Representative Butler, seconded by Representative Coursey, to find 900 KAR 5:020 deficient. A roll call vote was conducted with eight (8) votes to find the administrative regulation deficient, and zero votes not to find it deficient, the administrative regulation was found deficient.

Compiler's note: Pursuant to KRS 13A.335(4)(b), a new Section 3 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by the Subcommittee:

HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Educational Excellence Scholarship Program

11 KAR 15:080. Kentucky Educational Excellence Scholarship (KEES) Program. Becky Gilpatrick, director of student aid services, represented the authority.

In response to questions by Co-Chair Harris, Ms. Gilpatrick stated that the Cambridge Advanced International curriculum was a new program for Kentucky and the related examinations were similar to the advanced placement examinations. The addition of the Cambridge Advanced International curriculum courses was in response to a recent legislative update. Each school district determined the numerical range for each alphabetical grade, and the alphabetical grades were used in determining grade point averages (GPAs) for the KEES calculations. If a school district lowered the numerical ranges, that could result in elevated GPAs; however, based on a statistical study, the impact was not expected to seriously inflate GPAs for KEES award purposes.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 1 and 3 through 6 to comply
with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 15:100. Comprehensive transition and postsecondary programs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Early Childhood Development Scholarship Program


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Occupational License Fees

30 KAR 7:010. Standard form for occupational license fee return. Noel Caldwell, executive director, Kentucky Business One-Stop, represented the Secretary of State.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, as well as Section 2: (1) for clarity; and (2) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:034. Classified compensation administrative regulations. Dinah Bevington, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Retirement Systems: General Rules

105 KAR 1:200. Retirement procedures and forms. Jennifer Jones, assistant general counsel, and Brian Thomas, general counsel, represented the systems.

Office of the Secretary: Purchasing

200 KAR 5:365 & E. Alternative project delivery methods for capital construction. Doug Hendrix, deputy general counsel, and Jennifer Linton, director, Contracting and Administration, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF). Steve Hart, executive director, and Joel Thornbury, president, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add definitions for “immediate supervision,” “pharmacist-in-charge,” and “supervision;” and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Hairdressers and Cosmetologists: Board

201 KAR 12:110 & E. School license. Charles Lykins, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 4, 5, 7, 8, 9, 13, 14, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1, 2, 5, 6, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition of “preceptor”; and (2) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


201 KAR 20:070. Licensure by examination.

In response to a question by Co-Chair Harris, Mr. Goldman stated that recent legislation removed the requirement for HIV/AIDS education as part of the licensure and continuing competency processes established in this administrative regulation and in 201 KAR 20:110 and 20:215. HIV/AIDS education was still a component of the nursing school curriculum. The treatment for HIV/AIDS had remained static for many years; therefore, the need for treatment protocol updates was no longer necessary.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 4 to clarify that: (a) direct supervision shall be during work hours; and (b) privileged to practice shall be pursuant to KRS 314.470; and (5) to amend Section 5 to clarify that the provisions apply to an out-of-state applicant outside of the Nurse Licensure Compact.

201 KAR 20:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to delete language relating to the HIV course required by KRS 214.615 because the statute was repealed in 2015 House Bill 248; (4) to amend Section 5 to clarify that the provisions apply to an out-of-state applicant outside of the Nurse Licensure Compact; and (5) to amend Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A.


A motion was made and seconded to approve the following
amendments: (1) to amend Section 6 to clarify how the determination is made by the board as to if a continuing education offering shall be considered to be the same offering; and (2) to amend Sections 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:230. Renewal of licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to add a deadline for electronic applicants; and (4) to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:015. Boat and motor restrictions. Ron Brooks, fisheries director, and David Wicker, general counsel, represented the department.

In response to a question by Co-Chair Harris, Mr. Brooks stated that there was not a standard measurement for what constituted a small lake, but that a lake that was small for more than a trolling motor was determined on a case-by-case basis.

A motion was made and seconded to approve the following amendment: to amend Section 5(8) to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

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

In response to questions by Representative Turner, Mr. Brooks stated that size limits for walleye were different based on which body of water was fished. The department was trying to reestablish the Rockcastle strain of walleye, which had been overharvested. The requirements were less stringent for water bodies that contained only the Erie strain of walleye, since there was difficulty distinguishing from the Rockcastle strain.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
some of those same concerns, but that these administrative regulations provided enforcement capabilities that were currently lacking. These administrative regulations were an effort to improve concerns, such as those regarding distractions to drivers and unsightly roadway corridors.

In response to a question by Co-Chair Harris, Ms. Goodman stated that the proposed nonseverability clause to 603 KAR 5:155 stated that if a court found any part of this administrative regulation invalid, the administrative regulation would be deemed invalid in its entirety. The cabinet was confident in the statutory authority of 603 KAR 5:155 and did not believe that this administrative regulation was vulnerable; therefore, the proposed subcommittee amendment was not seen as harmful by the cabinet.

Ms. Goodman stated that these administrative regulations would allow many more Kentucky billboards in more permitted locations and with closer proposed setbacks, all of which would be distracting to drivers, unsightly, and costly to enforce. Other states that provided an exchange of traditional billboards for an electronic billboard had higher ratios, such as eight (8), seven (7), or six (6) to one (1). Logo boards were sufficient for tourist needs. The cabinet worried that electronic billboards could be perceived as texting while driving. The bright lights and changing messages of electronic billboards were designed to distract drivers into reading the advertising messages and were a nuisance to nearby homeowners. Billboards decreased property values and adversely affected tourism. Only the billboard industry benefited from these administrative regulations, including removal of vegetation for private gain. Electronic billboards were just as distracting and dangerous to drivers as texting while driving. These administrative regulations largely left the public out of the process compared with the representation afforded the billboard industry. The current proposal bypassed the legislative process after similar proposals failed in the legislature for at least fourteen (14) years. A pending national lawsuit would determine billboard regulations and would affect Kentucky. Scenic Kentucky requested that these administrative regulations not go forward until the release of the national lawsuit outcome, which was expected within a couple of weeks of this Subcommittee meeting.

Mr. Bergmann stated that Kentucky was a participant in the 1958 Bonus Act, which limited billboards. These administrative regulations dropped the Bonus Act. The closer setback requirements opened many new sites bypassed previously because of terrain impediments to viewing. 603 KAR 10:021, by allowing electronic billboards, would have to hire new employees to ensure compliance. The Beautification Act, which prohibited electronic billboards. That conflict was a subject of the current national lawsuit that was pending. The exchange rate for traditional billboards exchanged for an electronic billboard should be higher, should only include legal billboards, and should not include legal nonconforming or illegal billboards. Nonconforming billboards should ultimately be eliminated and should not be expanded or improved upon. The electronic lighting that is allowed may be three (3) times the brightness recommended by the Dark Sky Association. Billboards on ramps was a bad idea because those were already problem areas from a traffic safety perspective, and billboards would add another distraction. The purpose of the cabinet was to improve safety, but it was unclear how unsightly billboards improved safety. Billboards sometimes added to construction projects in case of road improvements. For example, St. Paul, Minnesota, in the process of replacing the Lafayette Bridge, spent $7.3 million related to one (1) electronic billboard and four (4) traditional billboards. Those taxpayer funds could have been spent for other road construction projects. Some countries prohibited electronic billboards.

Ms. Thacker stated that Kentucky Outdoor Advertising Association represented many billboard owners, some of whom were very small businesses and did not have even four (4) existing traditional billboards to exchange for one (1) electronic billboard, much less six (6). The Kentucky Outdoor Advertising Association had worked very hard for years with the cabinet to help develop these administrative regulations.

Senator Raque Adams made a motion to find these administrative regulations deficient. Ms. Goodman stated that the cabinet would rather defer consideration of these administrative regulations to the October Subcommittee meeting before a vote was taken regarding the motion to find these administrative regulations deficient. Senator Raque Adams withdrew the motion to find these administrative regulations deficient.

Co-Chair Marzian stated that she did not agree with these administrative regulations and that her district was ninety-five (95) percent opposed to the proliferation of billboards.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for “specimen tree”; (2) to amend Sections 2, 3, 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 7 to clarify that damage to vegetation included damage related to execution of the vegetation plan; and (4) to add a new section to insert a nonseverability clause so that if a court found any portion of this administrative regulation invalid, the entire administrative regulation would be deemed invalid. Without objection, and with agreement of the agency, the amendments were approved.

Compiler’s Note: KRS 13A.300(1)(b) and (2) requires agreement by the administrative body and the subcommittee for a deferral to be made at the meeting. There were not any statements made by Subcommittee members indicating agreement to defer consideration of these administrative regulations. Therefore, they were not deferred.

Billboards

603 KAR 10:002. Definitions for 603 KAR Chapter 10.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

603 KAR 10:010. Static advertising devices.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to: (a) raise from four (4) to six (6), the number of traditional billboards required in exchange for one (1) electronic billboard; and (b) raise from three (3) to five (5), the number of traditional billboards required in exchange for one (1) conversion of a traditional billboard into an electronic billboard.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Department of Workforce Investment: Office of Employment Training: Employment Services

787 KAR 2:040 & E. Local workforce development area governance. Beth Brinly, deputy secretary; Beth Kuhn, commissioner; and Clay Lamb, staff attorney, represented the department. David Adkisson, president, Kentucky Chamber of Commerce, appeared in support of this administrative regulation.

PUBLIC PROTECTION CABINET:
Department of Alcoholic Beverage Control: Licensing

804 KAR 4:390. License renewals. Frederick Higdon, commissioner; Steve Humphress, general counsel; and Melissa McQueen, staff attorney, represented the department. Gene Harmon, city attorney; David Lyne, occupational license manager; and Bruce Wilkerson, mayor, represented the City of Bowling Green and appeared in support of these administrative regulations. Representative Turner requested to be recorded as voting in opposition to these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 10 and 14 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 12 to include citations for the referenced forms. With agreement of the agency, the amendments were approved, with
Representative Turner voting not to approve.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 and the material incorporated by reference to: (1) clarify when the listed forms are to be used; and (2) correct a form title and form edition dates. With agreement of the agency, the amendments were approved, with Representative Turner voting not to approve.

Quotas

804 KAR 9:040. Quota retail package licenses.

In response to a question by Co-Chair Harris, Mayor Wilkerson stated that 804 KAR 9:040 and 9:050 restored some of the licenses, but not the full amount. Originally, Bowling Green had fifty-six (56) quota retail package licenses and forty-nine (49) quota retail drink licenses. After the amendments to 804 KAR 9:040 and 9:050, Bowling Green had forty-one (41) quota retail package licenses and forty-one (41) quota retail drink licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (2) correct a form title and form edition dates. With agreement of the agency, the amendments were approved, with Representative Turner voting not to approve.

804 KAR 9:050. Quota retail drink licenses.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to update references to city classifications; and (2) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. With agreement of the agency, the amendments were approved, with Representative Turner voting not to approve.

Department of Financial Institutions: Division of Securities: Securities

808 KAR 10:500. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412. Intrastate Crowdfunding Exemption. Shonita Bossier, director; Jessica Sharpe, general counsel; and Charles Vice, commissioner, represented the division.

In response to a question by Co-Chair Harris, Mr. Vice stated that the Kentucky Intrastate Crowdfunding Exemption allowed companies located in Kentucky to offer small securities to residents who live in Kentucky. A company outside of Kentucky could not offer securities to a resident of Kentucky, nor could residents outside of Kentucky invest in those companies. This was a method for Kentucky companies to raise a small amount of capital from Kentucky residents.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (2) to amend Section 5 to add a citation. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:070. Kentucky thoroughbred breeders’ incentive fund. Jamie Eads, director; Marc Guilfoyle, director of racing; and Susan Speckert, general counsel, represented the commission.

In response to a question by Co-Chair Harris, Ms. Speckert stated that there was an appeal process for a person who was detained from participating in an event due to a charge that had not yet resulted in a conviction. After that appeal process, there was also the process established in KRS Chapter 13B. The commission was confident that appropriate due process was provided. The reason for these provisions pertaining to animal cruelty situations in which animal cruelty was not an expressed component of a charge, such as an amended charge, but did occur.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to clarify what types of public auction may be approved by the department; (3) to amend Section 5 to clarify the criteria used to grant a residency exception; and (4) to amend Section 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:060. Quality and weight of materials. Michael Davis, general counsel; Gary Feck, commissioner; and David Moore, director, represented the division. Justin Brown, Marivan Development Group, appeared in support of 815 KAR 20:060 and 20:130. Matt Hammond, executive director, Mechanical Contractors Association of Kentucky; Steven Milby, Shelby County master plumber; and Ricky Russ, business agent for Union Plumber Pipe Trades, appeared in opposition to 815 KAR 20:060 and 20:130.

In response to a question by Co-Chair Marzian, Mr. Feck stated that 815 KAR 20:060 and 20:130 were the result of a working group that studied PVC and ABS construction code issues. The working group met to develop these provisions over the last eight (8) to ten (10) years. The working group brought to the Plumbing Code Committee four (4) proposals to consider that would expand Kentucky’s limitations on the use of PVC and ABS. The Plumbing Code Committee considered the proposals and voted to approve the code change established in 815 KAR 20:060 and 20:130. Currently, PVC and ABS were restricted to use in approximately forty-five (45) percent of the buildings constructed in Kentucky. The code change allowed up to eighty-five (85) percent of buildings constructed to use PVC and ABS. After the Plumbing Code Committee approved the code change, the matter was brought to the Board of Housing for consideration. The Board of Housing also approved the code change.

Mr. Brown stated that Marivan Development Group and other development groups were in favor of this code change. This was an economic development issue because lower construction costs would allow for more development, which would lower housing costs such as rents. This code change would especially benefit cities like Pikeville, Bowling Green, Paducah, Owensboro, Hopkinsville, Covington, and Louisville.

In response to a question by Co-Chair Harris, Mr. Brown stated that being required to use cast iron, rather than PVC or ABS, may increase some construction costs as much as 100 to 120 percent on a development.

Mr. Russ stated that, as a thirty (30) year licensed journeyman plumber and a former member of the Plumbing Code Committee, he was opposed to PVC and ABS being allowed in buildings over forty-five (45) feet tall. The code change proposal was based on anticipated economic savings to support affordable housing; however, while PVS and ABS were initially less expensive compared with cast iron, once fire stopping construction measures were used the cost savings was insignificant. Cast iron afforded occupants more time to vacate a burning structure because burning PVC and ABS produced incapacitating and deadly fumes. Some fire departments, such as Somerset, Benton, and Oldham County, may not have ladders tall enough for these taller structures. Charlotte Pipe and Foundry Company, which was one of the largest manufacturers of PVC, ABS, and cast iron pipes, published recommendations for value engineering considerations that did not support this code change. An additional concern with PVC and ABS piping was noise. This code change would allow PVC and ABS to be used in buildings with vulnerable populations, such as hospitals, nursing homes, and schools.

Mr. Hammond stated that the Mechanical Contractors Association of Kentucky agreed with the amendments made by Mr. Russ. Introducing PVC and ABS to the elevations established in the code change was unsafe for occupants. Economic
development claims were unsubstantiated.

Mr. Milby, who was a Shelby County master plumber and a former member of the Plumbing Code Committee, stated that the Plumbing Code Committee vote was very close on this issue. Thermal expansion of PVC and ABS during a fire event was a major concern that was not addressed in 815 KAR 20:060 and 20:130. PVC and ABS expanded at a greater rate than cast iron, and toxic fumes were a greater safety risk than fire itself. The plumbing code did not offer enough guidance regarding the safest installation practices for PVC and ABS. With public safety in mind, Mr. Milby requested that 815 KAR 20:060 and 20:130 be sent back to the Plumbing Code Committee for further consideration.

In response to a question by Representative Coursey, Mr. Hammond stated that there had not been input from the Kentucky Firefighters Association regarding the safety of the plumbing code change. The ground floors of buildings were to have the most minimal amounts of PVC and ABS because the fumes moved upward. The PVC and ABS was required to be installed in enclosures for safety. Mr. Davis stated that 815 KAR 20:060 and 20:130 did not mandate, but allowed, the use of PVC and ABS.

Cast iron was still an option.

In response to a question by Representative Turner, Mr. Moore stated that the State Fire Marshal had been contacted and provided input in the development of the code change.

In response to questions by Representative Butler, Mr. Moore stated safety concerns were part of the discussions in the development of this code change and the requirements established in 815 KAR 20:060 and 20:130 were the best compromise possible under the circumstances. Many other states had similar plumbing codes pertaining to PVC and ABS. Co-Chair Marzian stated that approximately thirty-five (35) percent of states had similar plumbing codes pertaining to PVC and ABS.

In response to a question by Representative Butler, Mr. Feck stated that the division would agree to deferral of 815 KAR 20:060 and 20:130 until the State Fire Marshal could testify before the Subcommittee; however, deferral was not necessary because the division had received sufficient input and met with the State Fire Marshal, the working group, the Plumbing Code Committee, and the Board of Housing. The matter had been fully considered.

A motion was made and seconded to approve the following amendment: to amend Section 9(6)(a) to make a technical correction for language consistency within this regulatory package. Without objection, and with agreement of the agency, the amendment was approved.

Representative Coursey stated that public safety was paramount and made a motion, seconded by Representative Turner, to find 815 KAR 20:060, as amended, and 20:130 deficient. A roll call vote was conducted, and with three (3) votes to find the administrative regulations deficient, and five (5) votes not to find the administrative regulations deficient, the amendments were not found deficient. The motion to find 815 KAR 20:060 and 20:130 deficient failed. Co-Chair Marzian explained her vote. She stated that this issue was considered over a long period of time and the plumbing code change was a benefit to economic development, in that the change made housing more affordable and created jobs for plumbers. Senator Raque Adams also explained her vote. She stated that if firefighters were concerned with public safety pertaining to the plumbing code change, they would have appeared at the Subcommittee meeting in opposition.

815 KAR 20:100. Joints and connections.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

**Electrical Division:**

815 KAR 35:020. Electrical inspections. Michael Davis, general counsel; Gary Feck, Commissioner; and Tina Quire, assistant director, represented the division.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify a cross-reference citation. Without objection, and with agreement of the agency, the amendment was approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Health Benefit and Health Information Exchange: Health Benefit Exchange**


A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify a cross-reference citation; and (2) to amend Sections 1, 2, 5, 13, 14, 15, 16, and 19 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Public Health: Office of Inspector General:**

**Division of Health Care: Health Services and Facilities**

902 KAR 20:420 & E. Pain management facilities. Stephanie Brammer-Barnes, regulation coordinator, and Maryellen Mynear, inspector general, represented the department.

In response to questions by Co-Chair Harris, Ms. Mynear stated that this administrative regulation was being amended in response to recent legislative changes, which allowed currently licensed pain management clinics to operate up to two (2) satellite facilities. Enforcement of these clinics was not other than changing.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 7 to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 7, 9, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Public Health Protection and Safety: Food and Cosmetics**

902 KAR 45:120. Inspection and permit fees: hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies. Laura Begin, regulation coordinator, and Justin Carrey, assistant director, represented the division.

In response to questions by Co-Chair Harris, Mr. Carrey stated that the agency proposed to increase fees and then lowered the proposed increase after public comments. This administrative regulation helped local health departments that provided funds to supplement what the fees did not cover.

A motion was made and seconded to approve the following amendment: to amend Section 5 to reduce the annual permit fee for hotels from sixty (60) to twenty-five (25) dollars to comply with KRS 219.021(2), which establishes the fee at that amount. Without objection, and with agreement of the agency, the amendment was approved.

**Department for Medicaid Services: Division of Policy and Operations: Medicaid Services**

907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services. Stuart Owen, regulation coordinator, represented the division.

In response to a question by Co-Chair Harris, Mr. Owen stated that rates were federally mandated to reflect first-year rates. Some facilities had very low initial rates. The federal program provided an alternative rate calculation, and this administrative regulation reflected that to give facilities a more accurate rate. The recalculation was optional.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Administration and Financial Management: Institutional Care
908 KAR 3:050. Per diem rates. Tonya Dickenson, regulation coordinator, and Stephanie Craycraft, director of administration and financial management, represented the division.


921 KAR 1:400. Establishment, review, and modification of child support and medical support orders. Mary Sparrow, policy analyst, represented the department.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program
921 KAR 3:060 & E. Administrative disqualification hearings and penalties. Virginia Carrington, director, and Elizabeth Caywood, internal policy analyst, 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; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (3) to amend Section 8 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:070 & E. Fair Hearings.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the October 13, 2015, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board
201 KAR 9:305. Continued licensure of athletic trainers.


Real Estate Commission: Commission
201 KAR 11:175 & E. Instructor approval procedures and guidelines.


201 KAR 11:210. Licensing, education, and testing requirements.

201 KAR 11:460. Minimum rating requirements for instructors.

Board of Medical Imaging and Radiation Therapy: Board
201 KAR 46:010. Definitions for 201 KAR Chapter 46.

201 KAR 46:020. Fees.

201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists.

201 KAR 46:040. Medical imaging technologist, advanced imaging procession and radiation therapist licenses.

201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists.

201 KAR 46:050. Provisional training license for medical imaging technologists and radiation therapists.

201 KAR 46:060. Continuing education requirements.

201 KAR 46:070. Violations and enforcement.

201 KAR 46:081. Limited x-ray machine operator.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board
501 KAR 1:080. Parole Board policies and procedures. John Cummings, counsel, represented the board.

Mr. Cummings requested deferral of this administrative regulation to the October 13 meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred to the October 13 meeting of the Subcommittee.

PUBLIC PROTECTION CABINET: Department of Charitable Gaming: Charitable Gaming
820 KAR 1:001. Definitions for 820 KAR Chapter 1.

820 KAR 1:032. Pulltab construction.


CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Health Care: 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.

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.

Division of Community Alternatives: Hospital Service Coverage and Reimbursement
907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services.

907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

921 KAR 2:017. Kentucky Works Program (KWP) supportive services.

921 KAR 2:046. Adverse action; conditions.

921 KAR 2:050. Time and manner of payments.
921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP).

921 KAR 2:500. Family Alternatives Diversion (FAD).

921 KAR 2:510. Relocation Assistance Program.

921 KAR 2:520. Work Incentive or "WIN".

**Supplemental Nutrition Assistance Program**

921 KAR 3:035. Certification process.


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

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

The Subcommittee adjourned at 3:30 p.m. until October 13, 2015.

*Compiler's Note: In setting the date for the October members, the subcommittee stated that the meeting would be scheduled to begin at 1:00 p.m.; however, the start time might be moved to 10:00 a.m. depending on the size of the agenda.*
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of September 3, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 3, 2015, having been referred to the Committee on September 2, 2015, pursuant to KRS 13A.290(6):

- 301 KAR 1:146
- 402 KAR 3:010
- 402 KAR 3:030
- 402 KAR 3:050
- 805 KAR 1:100

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:

- 402 KAR 3:050
- 805 KAR 1:100

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 September 3, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of September 14, 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 September 14, 2015, having been referred to the Committee on September 2, 2015, pursuant to KRS 13A.290(6):

- 16 KAR 2:020
- 16 KAR 4:030
- 702 KAR 7:065
- 704 KAR 3:303
- 705 KAR 4:041

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 September 14, 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 September 16, 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 September 16, 2015, having been referred to the Committee on September 2, 2015, pursuant to KRS 13A.290(6):

- 902 KAR 20:160
- 902 KAR 20:320
- 902 KAR 115:010
- 910 KAR 1:270

The following administrative regulations were deferred pursuant to KRS 13A.300:

902 KAR 20:320

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 16, 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

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

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

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

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.
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**LOCATOR INDEX - EFFECTIVE DATES**

**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

** Emergency expired after 180 days

‡ Withdrawn before being printed in Register

**** Emergency expired after 180 days

13A.300(4) and 13A.315(1)(d)

(‡) 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.)

**ORDINARY ADMINISTRATIVE REGULATIONS:**

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### SYMBOL KEY:
- * Statement of Consideration not filed by deadline
- ** 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.

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(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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**SYMBOL KEY:**
- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- *(r)* Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.
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